

G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Funeral Directors and Embalmers
<u>SUBJECT:</u>	Expedited Licensure for Military Applicants and Their Spouses
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 4-3-1304(d), (e), and (f)
<u>EFFECTIVE DATES:</u>	November 2, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	This Rule provides an expedited licensing process for certain military applicants and their spouses. The Rule also authorizes military applicants to substitute applicable military training for civilian training that is required for licensure.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

The proposed rule is a licensing requirement that will apply to all license and registration applicants equally, if the individual applicants meet the requirements. Therefore, businesses will not have any costs associated with this rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

There are no projected reporting, recordkeeping, or administrative costs for small businesses associated with this rule.

(3) A statement of the probable effect on impacted small businesses and consumers;

This rule has no projected impact on small businesses or consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

The rule will ease the burden of applying for a license or registration for those applicants who meet the requirements. There are no less burdensome, intrusive, or costly methods to achieve the purpose of the rule.

(5) A comparison of the proposed rule with any federal or state counterparts; and

There are no federal counterparts to this rule. Public Chapter 122 requires all regulatory boards to adopt rules expediting licenses for military applicants and applicants with spouses in the military. The Boards are adopting rules substantially similar to this proposed rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

This rule does not require small businesses to change their operations. Therefore, there is no need for an exemption.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rules have no projected impact on local governments

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Sequence Number: 08-07-14
Rule ID(s): 5783
File Date: 8/5/14
Effective Date: 11/2/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee State Board of Funeral Directors and Embalmers
Division:	Department of Commerce and Insurance, Regulatory Boards Division
Contact Person:	Ellery Richardson
Address:	Office of Legal Counsel 500 James Robertson Parkway Davy Crockett Tower, 5 th Floor Nashville, TN 37243
Zip:	37243
Phone:	615-741-8689
Email:	Ellery.richardson@tn.gov

Revision Type (check all that apply):

- ☐ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0660-05	Funeral Directors and Embalmers
Rule Number	Rule Title
0660-05-.04	Military Applicant – Spouses – Expedited Licensure

Substance of Proposed Rules
Chapter 0660-05
Funeral Directors and Embalmers

New Rule

0660-05-.04 Military Applicant – Spouses – Expedited Licensure.

(1) An applicant for registration meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license upon application and payment of all required fees if, in the opinion of the Board, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary license if the Board determines that the applicant's application does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to - education, training, or experience, in order to meet the requirements for the application to be substantially equivalent. The Board may issue a temporary license upon application and payment of all required fees for a regular license of the same type, which shall allow the person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Board for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary license and an expiration date as if the full license had been issued at that time.

2. A temporary license shall be issued for a period no longer than the length of a renewal cycle for a full license of the same type.

3. A temporary license shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary license cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary license shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full license of the same type.

(2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(3) _____

(a) Any registrant who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible for renewal upon the licensee being released from active duty without:

1. Payment of late fees or other penalties;

2. Obtaining continuing education credits when:

(i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Board; or

(ii) The person performs the licensed or certified occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Board.

(b) The license shall be eligible for renewal pursuant to this paragraph (3) for six (6) months from the person's release from active duty.

(c) Any person renewing under this paragraph (3) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to renewal of any license pursuant to this subsection.

Authority: T.C.A. §§ 4-3-1304(d), 4-3-1304(e), and 4-3-1304(f).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Robert O. Starkey, III	X				
Anita L. Taylor	X				
Wayne E. Hinkle	X				
W.T. Patterson	X				
Jane Gray Sowell	X				
David R. Neal	X				
Robert P. Helms				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) Tennessee State Board of Funeral Directors and Embalmers on 05/06/2014 (date), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 7-9-14

Signature: Ellery

Name of Officer: Ellery Richardson

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: July 9, 2014

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

7-21-14

Date

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SECRETARY OF STATE

Filed with the Department of State on: 8/5/14

Effective on: 11/2/14

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Insurance

SUBJECTS: Companies in Hazardous Financial Condition

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 56-2-301, 56-9-508, and 56-11-109

EFFECTIVE DATES: November 11, 2014 through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Rule adds additional grounds the commissioner may consider in determining whether a company is in hazardous financial condition and gives the commissioner additional authority to address companies in hazardous financial condition. The Rule allows the commissioner to detect more easily insurance companies that are in hazardous financial condition in order to protect policyholders in Tennessee from insurance companies that may be financially impaired.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The Department of Commerce and Insurance received no comments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are anticipated not to have a significant economic impact affecting small businesses. Tenn. Code Ann. §§ 56-1-408, 56-1-409, 56-1-416, 56-1-417, 56-2-301, 56-9-101, 56-9-106, 56-9-503, 56-9-504, 56-9-508, 56-11-106, 56-11-109 and 2014 Public Acts, Chapter 583 authorize the Commissioner to, or contemplate the Commissioner may, promulgate rules in order to establish whether a company is in hazardous condition. The proposed amendments add additional grounds that the commissioner may consider in determining whether a company is in hazardous condition, financial or otherwise, and give the commissioner additional authority to address companies in hazardous financial condition. Further, these rules are designed to allow the commissioner to detect more easily insurance companies that are in hazardous financial condition in order to protect policyholders in the State of Tennessee from insurance companies that may be financially impaired.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed rules will only apply to insurance companies that are licensed, or should be licensed, in this State. The remedies contemplated under this rule and the Insurers Rehabilitation and Liquidation Act, found in T.C.A. §§ 56-9-101 et seq., must occasionally be applied to companies that engage in the unauthorized business of insurance.
- (2) Insurance companies licensed in this State are required to meet certain minimum capital, surplus and risk based capital requirements. The proposed rules do not change those requirements, but rather allows the commissioner greater flexibility in determining if an insurance company's finances are such that the company poses a risk to policyholders in this State. This rule will not increase any capital and surplus, or record keeping requirements for insurance companies.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers and will only affect insurance companies.
- (4) There are no alternative methods to make the rule less costly, less intrusive or less burdensome.
- (5) There are no other counterparts in the State of Tennessee; however, this regulation is similar to regulations in effect in all fifty states and the District of Columbia.
- (6) Only insurance companies are subject to this rule. Most insurance companies licensed in this State have greater than 50 employees. Nevertheless, exempting any insurance company from this regulation would place the Tennessee policyholders at a greater risk of having their insurance claims go unpaid due to a company's financial impairment.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

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Sequence Number: 08-14-14
Rule ID(s): 5786
File Date: 8/13/14
Effective Date: 11/11/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Tony Greer, Assistant General Counsel
Address:	500 James Robertson Parkway Davy Crockett Tower, 8 th Floor Nashville, Tennessee
Zip:	37243
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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-66	Standards And Commissioner's Authority For Companies Deemed To Be In Hazardous Financial Condition
Rule Number	Rule Title
0780-01-66-.02	Purpose
0780-01-66-.03	Standards
0780-01-66-.04	Commissioner's Authority

**RULES OF THE DEPARTMENT OF COMMERCE AND
INSURANCE DIVISION OF INSURANCE**

**CHAPTER 0780—1—66
STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

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0780-01-66-.01. AUTHORITY

This chapter is adopted and promulgated by the Tennessee Department of Commerce and Insurance pursuant to T.C.A. §§ 4-5-101 et seq., 56-1-408, 56-1-409, 56-2-301, 56-9-101, 56-9-106, 56-9-503, 56-9-508, 56-11-206, and 56-11-209.

Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.

0780-01-66-.02. PURPOSE

(1) The purpose of this chapter is to set forth the standards which the Commissioner may use for identifying insurers found to be in such condition as to render the further transaction or continuance of their business hazardous, financially or otherwise, to the public, their creditors or to holders of their policies or certificates of insurance to their policyholders, creditors or the general public.

(2) This chapter is intended to aid in early detection of any potentially dangerous condition in an insurer and to afford prompt application of appropriate corrective measures, thereby implementing express purposes of the Insurers' Rehabilitation and Liquidation Act, T.C.A. § 56-9-101 et seq.

(3) This chapter shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of this state, nor shall this chapter be interpreted to supersede any laws or parts of laws of this state.

Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.

0780-01-66-.03. STANDARDS

(1) The following standards, either singly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous financially or otherwise, to their policyholders, creditors or the general public. The Commissioner may consider, in addition to any other relevant factors, the following:

(a1) Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;

(b2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related other financial analysis solvency tools and reports;

~~(c) The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;~~

~~(d) The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;~~

~~(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;~~

~~(e4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;~~

~~(f5) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining surplus as regards to policyholders in excess of the minimum required;~~

~~(6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;~~

~~(e7) Whether any affiliate, subsidiary or reinsurer a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the commissioner may affect the solvency of the insurer;~~

~~(h8) Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;~~

~~(i9) Whether any "controlling person" as defined in T.C.A. §§ 56-10-201 and 56-11-2101 of an insurer is delinquent in the transmitting to, or payment of, net premiums to such the insurer;~~

~~(j10) The age and collectability of receivables;~~

~~(k11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;~~

~~(l12) Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;~~

~~(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;~~

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(~~m~~14) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(~~n~~15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(~~o~~16) Whether the company has experienced or will experience in the foreseeable future cash flow ~~and~~ or liquidity problems.

(17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(18) Whether management persistently engages in material under reserving that results in adverse development;

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or,

(20) Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.

0780-01-66-.04. COMMISSIONER'S AUTHORITY

(1) For the purposes of making a determination of an insurer's financial condition under this chapter, the Commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Policies And Procedures Manual, state laws and regulations;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(2) If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the its policyholders, creditors or the general public, then the Commissioner may, upon a determi-

nation, issue an order consistent with applicable statutes requiring the insurer to:

- (a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
- (b) Reduce, suspend or limit the volume of business being accepted or renewed;
- (c) Reduce general insurance and commission expenses by specified methods;
- (d) Increase the insurer's capital and surplus;
- (e) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
- (f) File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
- (g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
- (h) Document the adequacy of premium rates in relation to the risks insured;
- (i) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Commissioner;
- (j) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;
- (k) Provide a business plan to the commissioner in order to continue to transact business in the state;
- (l) Adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer; or,
- (jm) Take any other appropriate remedial action.

If the insurer is a foreign insurer the Commissioner's order may be limited to the extent provided by statute.

(3)(a) Any insurer subject to an order under Subparagraph (2) may request a hearing to review that order, which request must be received within thirty (30) days of the issuance of the order or review shall be deemed waived. The order shall be accompanied by notice of the conduct, condition or ground upon which the Commissioner based the order and notice of an opportunity to be heard consistent with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Tennessee Code Annotated. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur within fifteen (15) days after the date of the request for hearing and shall be held at the main offices of the Department or, in the discretion of the Commissioner, at some other place convenient to the parties designated by the Commissioner. When the date, time and place of the hearing is determined, notice of same shall be given to the insurer.

(b) The order provided for in Subparagraph (2) is not an order of administrative supervision. The Commissioner deems that such order relates to supervision in that it is administrative corrective action to determine the condition of the insurer and to abate the Commissioner's determination that the insurer may be in hazardous or potentially dangerous

condition. An insurer's failure to comply with the order could lead to administrative supervision or other proceedings.

(c) Matters under this chapter shall be treated in compliance with T.C.A. § 56-9-504.

Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.

0780-01-66-.05. JUDICIAL REVIEW

Any order or decision of the Commissioner shall be subject to review in accordance with the Uniform Administrative Procedures Act, Title 4, Chapter 5 of the Tennessee Code Annotated.

Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.

0780-01-66-.06. SEVERABILITY

If any provisions of this chapter be held invalid, the remainder shall not be affected.

Administrative History: Original rule filed December 20, 1993; effective March 5, 1994.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 6/26/14 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 8/17/13

Rulemaking Hearing(s) Conducted on: (add more dates). 10/14/13



Date: 6-26-14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 6-26-14

Notary Public Signature: Denise M. Lewis

My commission expires on: 2-15-2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper Jr
Robert E. Cooper, Jr.
Attorney General and Reporter
7-8-14
Date

Department of State Use Only

Filed with the Department of State on: 8/13/14

Effective on: 11/11/14

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Commerce and Insurance
<u>DIVISION:</u>	Insurance
<u>SUBJECT:</u>	Market Conduct Annual Statement Filing Requirements
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 56-8-107
<u>EFFECTIVE DATES:</u>	November 11, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	The Rule allows the state to participate in a uniform system of collecting market-related information and requires certain companies subject to the Rule to electronically file market conduct annual statements with the commissioner in accordance with the filing instructions published by the National Association of Insurance Commissioners.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment 1

0780-01-85-.02

It was commented that the scope of this rule, as drafted, only requires insurance companies that are licensed pursuant to title 56 and required to file annual statements pursuant to T.C.A. § 56-1-501, 56-44-102, with the exception of those that write only accident and health insurance, must file market conduct annual statements in the manner provided by this Chapter. It was further commented that the scope of this rule did not apply to single employer workers' compensation self-insureds or workers' compensation self-insurance pools.

Agency Response to Comment 1

The Department agrees with this comment. This rule does not apply to single employer workers' compensation self-insureds or workers' compensation self-insurance pools.

Comment 2

0780-01-85-.04

It was commented that the term complaint shows up in the definitions section but is not used anywhere else in the rule.

Agency Response to Comment 2

The Department has removed the definition of complaint from the rule.

Comment 3

0780-01-85-.06

It was commented that this rule seeks to make information confidential by rule and that only a statute can declare information to be confidential.

Agency Response to Comment 3

The Department disagrees with this comment. Rule 0780-01-85-.06 is based on statutory authority found in T.C.A. § 56-8-107. T.C.A. § 56-8-107(c) states that the Commissioner may promulgate rules that require companies authorized to do business under this title, with the exception of those that write accident and health insurance, to annually file in the office of the commissioner an annual statement in a form adopted for use by companies, which shall provide information concerning its market conduct of that year. T.C.A. § 56-8-107(d) states that All testimony, documents and other information submitted to the commissioner pursuant to this section, and all records and documents maintained pursuant to this section shall be privileged and shall not be disclosed pursuant to § 10-7-503 or § 56-1-602, nor shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within the commissioner's discretion, may share the documents and information with other state or federal agencies, or with any law enforcement authority.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are anticipated not to have a significant economic impact affecting small businesses. 2009 Public Acts, Chapter 383 and T.C.A. §§ 56-2-305 and 56-8-107 authorize the Commissioner to promulgate rules that require companies authorized to do business under title 56, with the exception of those that write accident and health insurance, to annually file information concerning its market conduct of that year. This new rule will require companies subject to this rule to electronically file with the commissioner its market conduct annual statement in accordance with the filing instructions published by the National Association of Insurance Commissioners. This rule will allow Tennessee to participate in a uniform system of collecting market-related information to help states monitor the market conduct of companies. Currently, this uniform system is used to collect claims and underwriting data on the Private Passenger Auto, Homeowners, Life and Annuity lines of business. This rule will allow the commissioner to identify concerns regarding the timeliness of claim payments and policy replacement counts. Currently, forty-five states participate in this uniform system. Tennessee is one of five states that do not currently participate. The other non-participating states are North Dakota, South Dakota, New York and Connecticut. Arkansas became the most recent state to participate in 2012. Tennessee is currently the only southeastern state that is not participating.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed rules will only apply to insurance companies licensed in this State.
- (2) Insurance companies licensed in this State are likely already participating in this uniform system. This uniform system is currently operating in 45 other states. Tennessee would be the 46th state to join. Companies that operate in more than one state are already going to be participating in this uniform system and should incur little to no additional cost to comply with this rule.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers and will only affect insurance companies.
- (4) There are no alternative methods to make the rule less costly, less intrusive or less burdensome.
- (5) There are no other counterparts in the State of Tennessee; however, this regulation is similar to regulations in effect in 45 other states and the District of Columbia.
- (6) Only insurance companies are subject to this rule. Most insurance companies licensed in this State have greater than 50 employees. Nevertheless, exempting any insurance company from this regulation would place the Tennessee policyholders at a greater risk of having their claims not paid timely.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

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For Department of State Use Only

Sequence Number: 08-15-14
Rule ID(s): 5787
File Date: 8/13/14
Effective Date: 11/11/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Tony Greer, Assistant General Counsel
Address:	500 James Robertson Parkway Davy Crockett Tower, 8 th Floor Nashville, Tennessee
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Email:	tony.greer@state.tn.us

Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0780-01-85	Market Conduct Annual Statement Filing Requirements
Rule Number	Rule Title
0780-01-85-.01	Purpose.
0780-01-85-.02	Scope.
0780-01-85-.03	Authority.
0780-01-85-.04	Definitions.
0780-01-85-.05	Market conduct annual statement.
0780-01-85-.06	Confidential materials.
0780-01-85-.07	Violations and penalties.
0780-01-85-.08	Severability.

Chapter 0780-01-85
Market Conduct Annual Statement Filing Requirements

New Rules

0780-01-85-.01 Purpose.
0780-01-85-.02 Scope.
0780-01-85-.03 Authority.
0780-01-85-.04 Definitions.
0780-01-85-.05 Market conduct annual statement.
0780-01-85-.06 Confidential materials.
0780-01-85-.07 Violations and penalties.
0780-01-85-.08 Severability.

0780-01-85-.01 Purpose.

The purpose of this Chapter is to set forth the manner in which insurers licensed in the State of Tennessee, except those that write only accident and health insurance, file market conduct annual statements with the commissioner in order to foster nationwide consistency in market conduct oversight.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.02 Scope.

Every insurer authorized to do business under the provisions of Title 56, that is required to file annual statements pursuant to T.C.A. §§ 56-1-501, 56-44-102, or otherwise by law, with the exception of those that write only accident and health insurance, must file market conduct annual statements in the manner provided by this Chapter.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.03 Authority.

This Chapter is promulgated by the commissioner pursuant to 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.04 Definitions.

- (1) "Commissioner" means the commissioner of the Tennessee Department of Commerce and Insurance.
- (2) "Department" means the Tennessee Department of Commerce and Insurance.
- (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) "NAIC" means the National Association of Insurance Commissioners.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.05 Market conduct annual statement.

- (1) Every insurer with a certificate of authority in this State, with the exception of those that write only accident and health insurance, shall electronically file with the commissioner its market conduct annual statement, as authorized by T.C.A. § 56-8-107, in accordance with the filing instructions published by the NAIC.

- (2) For purposes of this chapter, the market conduct annual statement filing is not complete until it has been received by the commissioner, in either hard copy or electronic form, as designated by the commissioner.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.06 Confidential Materials.

All testimony, documents and other information submitted pursuant to Rule 0780-01-85-.05, and all records and documents maintained pursuant to Rule 0780-01-85-.05 shall be privileged and shall not be disclosed pursuant to T.C.A. § 10-7-503 or 56-1-602, nor shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within the commissioner's discretion, may share the documents and information with other state or federal agencies, or with any law enforcement authority.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.07 Violations and penalties.

Any insurer that fails to make and file its market conduct annual statement in the form and time provided by Rule 0780-01-85-.05 shall be subject to the applicable penalties provided for by T.C.A. § 56-2-305, as well as such other sanctions provided for by law.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. §§ 56-2-305 and 56-8-107.

0780-01-85-.08 Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Chapter and the application of such provision to other persons or circumstance shall not be affected thereby. To this end, the provisions of this chapter are declared severable.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 4/15/14 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 8/17/13

Rulemaking Hearing(s) Conducted on: (add more dates). 10/14/13



Date: April 15, 2014

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: April 15, 2014

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
8-6-14
Date

Department of State Use Only

Filed with the Department of State on: 8/13/14

Effective on: 11/11/14

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Tennessee Student Assistance Corporation
<u>DIVISION:</u>	Higher Education
<u>SUBJECT:</u>	Tennessee Education Lottery Scholarship Program
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 49-4-903, 49-4-204, and 49-4-924
<u>EFFECTIVE DATES:</u>	November 25, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	The Rule clarifies the awarding of TELS funds to transient students and clarifies timelines within the appeal and exception process to ensure consistency in the processing of TELS appeals.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule

Pursuant to T.C.A. § 4-5-202, the Tennessee Student Assistance Corporation (TSAC) intends to file proposed rules, to amend the current rules of Chapter 1640-01-19 Tennessee Education Lottery Scholarship (TELS) Program, in lieu of a rulemaking hearing. It is the intent of TSAC to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of issue of the Tennessee Administrative Register in which the proposed rules are published.

The proposed rule acts to adopt changes to the Tennessee Education Lottery Scholarship (TELS) Program Chapter 1640-01-19 as proposed rules, clarifying the awarding of TELS funds to transient students and clarifying timelines within the appeal and exception process to ensure consistency in the processing of the TELS appeals. These rules regulate a state funded lottery scholarship program designed for qualified Tennessee students attending postsecondary institutions in Tennessee.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked diligently with key postsecondary education institution personnel to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

TSAC expects all education institutions engaged in the administration of the Tennessee Education Lottery Scholarship Program to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact postsecondary institutions employing fifty (50) or fewer full-time employees.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to the eligible postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules for the Tennessee Education Lottery Scholarship Program Chapter 1640-01-19, as proposed, shall have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 08-24-14
Rule ID(s): 5791
File Date: 8/27/14
Effective Date: 11/25/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
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Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1640-01-19	Tennessee Education Lottery Scholarship Program
Rule Number	Rule Title
1640-01-19-.01	Definitions
1640-01-19-.26	Appeal and Exception Process

**RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION**

**CHAPTER 1640-01-19
TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM**

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1640-01-19-.01 DEFINITIONS.

- (1) Academic requirement: The term is defined in T.C.A. § 49-4-902.
- (2) Academic Year: The term is defined in T.C.A. § 49-4-902.
- (3) ACT: The ACT Assessment administered by ACT, Inc., exclusive of the essay and optional subject area battery tests.
- (4) Adjusted gross income attributable to the student: The term is defined in T.C.A. § 49-4-902.
- (5) Alternative Study program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships that includes travel outside the State of Tennessee that is sponsored or offered by:
 - (a) an eligible postsecondary institution; or
 - (b) an eligible postsecondary institution in conjunction with either another eligible postsecondary or a postsecondary institution that is accredited by a regional accrediting association.
- (6) ASPIRE Award: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE Scholarship and whose adjusted gross income attributable to the student does not exceed the amount as described in T.C.A. § 49-4-915(a)(2).
- (7) Award Year: A period of time, typically nine (9) months, in which a full-time student is expected to complete the equivalent of a minimum of two (2) semesters of academic study.

(Rule 1640-01-19-.01, continued)

- (8) Board of Regents: The board of regents of the state university and community college system of Tennessee.
- (9) Certificate or Diploma: The term is defined in T.C.A. § 49-4-902.
- (10) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.
- (11) Continuous Enrollment: The term is defined in T.C.A. § 49-4-902.
- ~~(12) Corporation: Tennessee Student Assistance Corporation (TSAC).~~
- (1312) Cost of Attendance: The term is defined in T.C.A. § 49-4-902.
- (1413) Credit Hours Attempted: The number of semester hours for which a degree-seeking or diploma/ certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-01-19-.22.
- (1514) Degree: A two-year associate degree or four-year baccalaureate degree conferred on students by a postsecondary educational institution upon completion of a unified program of study at the undergraduate level.
- (1615) Dependent Child of a Military Parent: A natural or adopted child or stepchild whom a military parent claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another state or nation only while the military parent is engaged in active military service, on full-time national guard duty, or actively employed by the U.S. Department of Defense.
- (1716) Dependent Child of a Full-time Religious Worker: A natural or adopted child or stepchild whom the parent, who is a religious worker, claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another nation only while the parent is actively engaged in full-time religious work.
- (1817) Distance Education: An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.
- (1918) Dual Enrollment Grant: The term is defined in T.C.A. § 49-4-902.
- (2019) Eligible High School: The term is defined in T.C.A. § 49-4-902.
- (2120) Eligible Independent Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.
- (2221) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.
- (2322) Eligible Public Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.
- (2423) Entering Freshman: The term is defined in T.C.A. § 49-4-902.

(Rule 1640-01-19-.01, continued)

- (2524) FAFSA: Free Application for Federal Student Aid or the Renewal FAFSA as authorized by the U. S. Department of Education to indicate eligibility for federal and state financial aid programs.
- (2625) Foster Child: A child who was in the custody of the Tennessee Department of Children's Services as described in T.C.A. § 49-4-933(b).
- (2726) Full-Time Student: The term is defined in T.C.A. § 49-4-902.
- (2827) GED: The term is defined in T.C.A. § 49-4-902.
- (2928) General Assembly Merit Scholarship: The term is defined in T.C.A. § 49-4-902.
- (3029) Gift Aid: The term is defined in T.C.A. § 49-4-902.
- (3130) Grade Point Average (GPA): The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.
- (3231) Home School Student: The term is defined in T.C.A. § 49-4-902.
- (3332) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.
- (3433) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.
- (3534) Immediate Family Member: Spouse, parents, children or siblings.
- (3635) Incarcerated: Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.
- (3736) Joint Enrollment: An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.
- (3837) Junior: The term is defined in T.C.A. § 49-4-902.
- (3938) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.
- (4039) Military Parent: The term is defined in T.C.A. § 49-4-926(b)(2).
- (4140) Nonacademic requirement: The term is defined in T.C.A. § 49-4-902.
- (4241) Non-Traditional student: The term is defined in T.C.A. § 49-4-902.
- (4342) Parent: The term is defined in T.C.A. § 49-4-902.
- (4443) Part-time Student: The term is defined in T.C.A. § 49-4-902.
- (4544) Regional Accrediting Association: The term is defined in T.C.A. § 49-4-902.
- (4645) Religious Worker: The term is defined in T.C.A. § 49-4-934(b)(2).

(Rule 1640-01-19-.01, continued)

- (4746) SAT: The SAT administered by the College Board, exclusive of the essay and optional subject area battery tests.
- (4847) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution at which the student is currently enrolled.
- (4948) Semester: The term is defined in T.C.A. § 49-4-902.
- (5049) Semester grade point average: The grade point average for the semester as calculated by the postsecondary institution utilizing its institutional grading policy.
- (5150) Semester Hour: The term is defined in T.C.A. § 49-4-902.
- (5251) Study Abroad Program: Programs of study for which college credit is earned that include travel outside the United States.
- (5352) TELS (Tennessee Education Lottery Scholarship) Award: Any scholarship and/or grant provided for by these rules that a student is eligible to receive, excluding the Dual Enrollment Grant.
- (5453) Tennessee HOPE Access Grant: The term is defined in T.C.A. § 49-4-902.
- (5554) Tennessee HOPE Foster Child Tuition Grant: A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible postsecondary institution the student attends.
- (5655) Tennessee HOPE Scholarship: The term is defined in T.C.A. § 49-4-902.
- (5756) Tennessee National Guard: The term is defined in T.C.A. § 49-4-926(b)(3).
- (5857) Test Date: The date designated for the ACT test administered by ACT, Inc., or the date designated for the SAT test administered by the College Board at national test centers. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship, as well as a statewide test date established by the State Department of Education that is sanctioned by the respective test entities.
- (5958) Title IV: The term is defined in T.C.A. § 49-4-902.
- (6059) Transient Student: A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which he or she was previously enrolled.
- (60) TSAC: Tennessee Student Assistance Corporation.
- (61) Undergraduate Student: A student attending an eligible postsecondary institution and enrolled in a program leading to a diploma/certificate, an associate degree, or a bachelor's degree.
- (62) Unweighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.
- (63) Weighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.

(Rule 1640-01-19-.01, continued)

- (64) Wilder-Naifeh Technical Skills Grant: The term is defined in T.C.A. § 49-4-902.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-926, 49-4-930, 49-4-933, 49-4-934, and 49-4-935.

Administrative History: Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendment filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

- (1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.
- (2) Award amounts for the following programs shall be determined in accordance with T.C.A. § 4-51-111 and shall be set in the General Appropriations Act:
 - (a) Tennessee HOPE Scholarship Award pursuant to T.C.A. § 49-4-914 (a) and (b);
 - (b) Tennessee ASPIRE supplemental award pursuant to T.C.A. § 49-4-915;
 - (c) General Assembly Merit Scholarship supplemental award pursuant to T.C.A. § 49-4-916;
 - (d) Tennessee HOPE Access Grant award pursuant to T.C.A. § 49-4-920; and
 - (e) Wilder-Naifeh Technical Skills Grant pursuant to T.C.A. § 49-4-921.
- (3) The Dual Enrollment Grant shall be:
 - (a) One hundred dollars (\$100) per semester hour (or equivalent contact hours at technology centers) for a maximum award of three hundred dollars (\$300) per semester and six hundred dollars (\$600) per academic year.
- (4) Tennessee HOPE Foster Child Tuition Grant amounts shall be pursuant to T.C.A. § 49-4-933.
- (5) Recipients of any TELS award as provided by these rules, except for the Dual Enrollment Grant and the Wilder-Naifeh Technical Skills Grant may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.
- (6) Except for approved medical or personal leaves of absence as provided in Rule 1640-01-19-.20 or emergency military duty as provided in Rule 1640-01-19-.21, award recipients must be continuously enrolled and maintain satisfactory academic progress at an eligible postsecondary institution.

(Rule 1640-01-19-.02, continued)

- (7) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, ~~the Corporation~~TSAC shall determine the appropriate manner in which the various awards shall be reduced.
- (8) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student's total aid package.
- (9) The receipt of a Tennessee HOPE Scholarship, Tennessee HOPE Access Grant, Tennessee ASPIRE Award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Dual Enrollment Grant is contingent upon admission and enrollment at an eligible postsecondary institution. Academically qualifying for any of these awards programs does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-930, and 49-4-933. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed January 30, 2009; effective May 29, 2009.

1640-01-19-.03 APPLICATION PROCESS.

- (1) The FAFSA shall be the application for all first year TELS awards and the FAFSA, or Renewal FAFSA, shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the adjusted gross income attributable to the student, he or she is required to complete the FAFSA for each academic year in order to apply for and receive a TELS award.
- (2) Students must have a FAFSA received by the U.S. Department of Education on or before September 1 for fall enrollment and February 1 for spring and summer enrollment in determining awards for that academic year. Students enrolling in a Tennessee Technology Center shall have a FAFSA received by the U. S. Department of Education on or before July 1 for the summer trimester, November 1 for the fall trimester and March 1 for the spring trimester. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is received by the above deadlines.
- (3) Students shall apply for the Dual Enrollment Grant during their junior and senior years prior to high school graduation by submitting the Dual Enrollment Grant Application to the postsecondary institution to which the student is seeking admission. The student must renew the Dual Enrollment Grant application each postsecondary academic term.
 - (a) The application deadline shall be set by the high school and postsecondary institution participating in the Dual Enrollment Grant program, but shall be no later than the eligible postsecondary institution's census date for that semester.

(Rule 1640-01-19-.03, continued)

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.04 GENERAL ELIGIBILITY.

- (1) To be eligible for a TELS award a student shall:
 - (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of the date of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment; and
 - (c) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-01-19-.03; and
 - (d) Be admitted to an eligible postsecondary institution; and
 - (e) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student; and
 - (f) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
 - (g) Meet each qualification relating to the relevant TELS award and applicable to the student; and
 - (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
 - (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
 - (j) Not be incarcerated.

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-904, 49-4-905, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP.

- (1) This paragraph applies to student eligibility requirements as amended effective July 1, 2007. To be eligible for a Tennessee HOPE Scholarship as an entering freshman, a student, who graduated from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall meet the requirements of T.C.A. § 49-4-907.
- (2) To be eligible for a Tennessee HOPE scholarship as an entering freshmen, a student who completes high school in a Tennessee home school program after December 1, 2003, who obtains a GED after December 1, 2003, or who graduates from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall meet the requirements of T.C.A. § 49-4-908.
- (3) To be eligible for a Tennessee HOPE scholarship, a student who graduates from an eligible high school, who graduates from a high school located in Tennessee that is not an eligible high school, who completes high school in a Tennessee home school program, or who obtains a GED after January 1, 2003, but prior to December 1, 2003, shall meet the requirements of T.C.A. § 49-4-909.
- (4) To be eligible for a TELS award, students entering active duty in the United States Armed Services within two (2) years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED, shall meet the requirements of T.C.A. § 49-4-918.
- (5) A student who is a Tennessee citizen and a dependent child of a full-time military parent may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.
 - (a) Such students may be eligible if they meet all eligibility requirements for a HOPE Scholarship except that:
 1. While the parent is a military parent, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED.
 - (b) Students who graduated from a high school outside of Tennessee may nevertheless be eligible if the high school was:
 1. Operated by the United States; or
 2. Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 3. Accredited by an accrediting association recognized by the foreign nation in which the school is located.
 - (c) Students graduating from high schools outside Tennessee who do not meet the requirements of part 2. of subparagraph (b) may still be eligible for the HOPE Scholarship if they completed high school in a home school program or obtained a GED.
 - (d) Paragraph (5) shall only apply to:

(Rule 1640-01-19-.05, continued)

1. Dependent children of members of the armed forces or Tennessee National Guard whose home of record, at the time of entry into military service, is Tennessee; and
 2. Dependent children of full-time civilian employees of the U.S. Department of Defense, who are Tennessee residents.
- (6) A student who is a Tennessee citizen and a dependent child of a full-time religious worker may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.
 - (a) Such student must meet all Tennessee HOPE Scholarship eligibility requirements except that:
 1. While the student's parent is serving in another nation as a religious worker, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED.
 - (b) To be eligible for the Tennessee HOPE Scholarship under this paragraph (6), the student must:
 1. Graduate from a high school in the foreign nation where the student's parent is a religious worker that is accredited by a regional accrediting association as defined in T.C.A. § 49-4-902 and meet the academic eligibility requirements of T.C.A. § 49-4-907(3); or
 2. Complete high school in a home school in the foreign nation where the student's parent is a religious worker and meet the academic requirements of T.C.A. § 49-4-908(2)(A).
 - (c) Paragraph (6) only applies to dependent children of religious workers who are engaged in full-time religious work in another nation for more than one (1) year and who were Tennessee residents before leaving the U.S. to do religious work and intend to return to Tennessee upon completion of their assignment as a religious worker.
- (7) In addition to the requirements of T.C.A. § 49-4-931, to be eligible for a Tennessee HOPE Scholarship, a non-traditional student shall meet the general eligibility requirements of Rule 1640-01-19-.04 and:
 - (a) Is at least twenty-five years (25) of age; and
 - (b) Has an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2); and
 - (c) Has enrolled in an eligible postsecondary institution and, except as provided by T.C.A. § 49-4-919, has maintained continuous enrollment at the eligible postsecondary institution either as a first time freshmen; or at least two (2) calendar years since the end of the semester of previously attending any postsecondary institution; and
 - (d) Since meeting the requirements of subparagraph (7)(c), has attended an eligible postsecondary institution and has maintained satisfactory progress in a course of study, in accordance with the standards and practices used for Federal Title IV

(Rule 1640-01-19-.05, continued)

programs at the postsecondary institution attended, either in an associate's degree program at a community college; or in an associate's or bachelor's degree program at a four-year institution; and

- (e) Meets the GPA requirements at the end of the twelve (12) semester hours as described in T.C.A. § 49-4-931(b); and
 - (f) Enrolls in the semester immediately succeeding the semester in which eligibility is established.
 - (g) If the student fails to maintain continuous enrollment as required by subparagraphs (c) and (g) of this paragraph (7), the student must wait two (2) calendar years from the end of the semester of attending any postsecondary institution, before attempting to establish eligibility.
- (8) To be eligible for a Tennessee HOPE Scholarship, students graduating from a high school located in a neighboring state in a county contiguous to Tennessee shall meet the requirements of T.C.A. § 49-4-935.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-905, 49-4-907, 49-4-908, 49-4-909, 49-4-910, 49-4-918, 49-4-924, 49-4-926, 49-4-930, 49-4-931, 49-4-934, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 1, 2009; effective May 31, 2010.

1640-01-19-.06 ELIGIBILITY – TENNESSEE ASPIRE AWARD.

- (1) Except as provided in T.C.A. § 49-4-931, any student eligible for the Tennessee HOPE Scholarship with an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2) will receive the ASPIRE award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE award. Notwithstanding the provisions of Rule 1640-01-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE Scholarship and meeting the requirements of this rule shall receive the ASPIRE award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously receive both awards.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-915, 49-4-917, 49-4-924, 49-4-930, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. . Public

(Rule 1640-01-19-.06, continued)

necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP.

- (1) To be eligible for the General Assembly Merit Scholarship the student shall meet the requirements of T.C.A. § 49-4-916.
- (2) Students eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously be awarded both.
- (3) A student eligible for a Tennessee HOPE Scholarship under Rule 1640-01-19-.05(8) shall not be eligible for a General Assembly Merit Scholarship supplemental award under T.C.A. § 49-4-916.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-916, 49-4-917, 49-4-924, and 49-4-935. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Tennessee HOPE Access Grant a student shall meet the requirements of T.C.A. § 49-4-920.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-920, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.09 ELIGIBILITY – TENNESSEE HOPE FOSTER CHILD GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for the Tennessee HOPE Foster Child Grant a student shall meet the requirements of T.C.A. § 49-4-933.
- (2) The Tennessee HOPE Foster Child Tuition Grant shall be the cost of attendance less any gift aid, with the total HOPE Foster Child Tuition Grant amount not to exceed the cost of tuition and mandatory fees at the eligible postsecondary institution attended. Additionally, at an eligible independent postsecondary institution, the Tennessee HOPE Foster Child Tuition Grant shall not exceed the statewide average public tuition and mandatory fee rate for the type of institution (two-year or four-year) attended.

(Rule 1640-01-19-.09, continued)

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-924, and 49-4-933. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.10 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT.

- (1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Wilder-Naifeh Technical Skills Grant a student shall meet the requirement of T.C.A. § 49-4-921.

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-921, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.11 ELIGIBILITY – DUAL ENROLLMENT GRANT.

- (1) To be eligible for a Dual Enrollment Grant a student shall meet the requirements of T.C.A. § 49-4-930.
- (2) The student must have completed all of the academic requirements of the 10th grade (high school sophomore) and be classified as an 11th grader (high school junior) or 12th grader (high school senior) by the student's high school or home school program.
- (3) The student must not have already received a high school diploma or GED diploma.
- (4) A student's participation in the Dual Enrollment Grant program is limited to the remaining amount of time normally required to complete the high school diploma, from the time of initial participation in the program. The grant is available for the regular fall and spring semester, and for summer semesters prior to graduation from high school for those students who did not exceed the maximum award during the regular school year.

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19.12 RETENTION OF AWARDS – GENERAL REQUIREMENTS.

- (1) To retain a TELS award authorized by this chapter, a student, including a non-traditional student, at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA pursuant to Rule 1640-01-19-.03 for the applicable award for each academic year.
- (2) Eligibility for the HOPE Scholarship shall be reviewed in accordance with T.C.A. § 49-4-911. These benchmarks for students receiving the TELS as a non-traditional student shall only apply to grades earned and credit hours attempted after enrolling in accordance with rule 1640-01-19-.05(7)(c).
- (3) Except as provided in paragraph (4) of this rule and Rules 1640-01-19-.20 and 1640-01-19-.21, a student may receive a Tennessee HOPE Scholarship until a terminating event as described in T.C.A. § 49-4-913 occurs. For students receiving the TELS as a non-traditional student, the five (5) year limitation will be determined when the sum of the number of years the student received the TELS award as a traditional student, and the years during which the student has received the TELS award as non-traditional student equals five (5) years.
- (4) The attempted credit hour includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. These benchmarks for students receiving the TELS as a non-traditional student shall only apply to grades earned and credit hours attempted after enrolling in accordance with Rule 1640-01-19-.05(7)(c).
- (5) A student who meets all other requirements for fourth or fifth year eligibility except that he or she is classified at the professional level rather than as an undergraduate, and has not been awarded a baccalaureate degree, is eligible if he or she was accepted into the professional level program of study that is an extension of the student's bachelor's degree program.
- (6) If a student ceases to be eligible for any TELS award, except the General Assembly Merit Scholarship, due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24), forty-eight (48), seventy-two (72), ninety-six (96), or any subsequent multiple of twenty-four (24) semester hours thereafter, the student may regain the applicable award or awards by:
 - (a) Continuing to meet all applicable non-academic requirements for the applicable award or awards; and
 - (b) Maintaining continuous enrollment at an eligible postsecondary institution without the applicable award or awards; and
 - (c) Attaining grade point average requirements as described in T.C.A. § 49-4-911 at the end of any semester in which eligibility would have been reviewed, had the student not lost the award or awards; and
 - (d) Reapplying for the scholarship as provided in Rule 1640-01-19-.03.
- (7) The provisions of paragraph (6) of this rule shall also apply to any student who:
 - (a) Completed high school requirements after December 1, 2003, who, for whatever reason, did not receive a TELS award, notwithstanding the fact that the student met the applicable initial eligibility requirements of Rule 1640-01-19-.05(1); or
 - (b) Completed high school requirements after January 1, 2003 and prior to December 1, 2003, who completed at least twenty-four (24) semester hours during the 2003-2004 academic year with a cumulative grade point average under 2.75, but met all other

(Rule 1640-01-19-.12, continued)

applicable initial eligibility requirements of Rule 1640-01-19-.05(3), and is otherwise eligible for the award.

- (8) No retroactive awards shall be made for semester hours attempted in order to regain the scholarship.
- (9) A student can utilize the option outlined in paragraph (6) of this rule only one time. A student who, after regaining the award or awards pursuant to paragraph (6) of this rule, subsequently fails to retain any TELS award due to failure to achieve the cumulative grade point average at a regular credit hour checkpoint shall not be eligible to regain the TELS award or become eligible for another TELS award.
- (10) Except as provided by Rule 1640-01-19-.20 or 1640-01-19-.21, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-909, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.

1640-01-19-.13 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT.

- (1) In addition to the general requirements for retention of award in Rule 1640-01-19-.12:
 - (a) A Tennessee HOPE Access Grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of twenty-four (24) semester hours. A student who is eligible for a Tennessee HOPE Scholarship shall be ineligible for a Tennessee HOPE Access Grant.
 - (b) If a student receiving a Tennessee HOPE Access Grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student shall be eligible for a Tennessee HOPE Scholarship. The student will also receive the ASPIRE award referenced in Rule 1640-01-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed the amount described in T.C.A. § 49-4-915(a)(2).
 - (c) If a student ceases to be eligible due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student may be eligible to regain the HOPE Scholarship by following the procedure outlined in Rule 1640-01-19-.12(6).

(Rule 1640-01-19-.13, continued)

- (d) A student may receive a Tennessee HOPE Scholarship after having received a Tennessee HOPE Access Grant until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-913, 49-4-915, 49-4-920, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.14 RETENTION OF AWARDS – DUAL ENROLLMENT GRANT.

- (1) To be eligible for a Dual Enrollment Grant the student must meet the minimum requirements pursuant to T.C.A. § 49-4-930.
- (2) The Dual Enrollment cumulative grade point average used to determine eligibility for a renewal of a Dual Enrollment Grant must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all dual enrollment credit hours attempted, except as otherwise provided in this rule.
- (3) Distance education courses and independent studies courses are eligible for payment with a Dual Enrollment Grant and shall be included in the calculation of the postsecondary cumulative grade point average.
- (4) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a Dual Enrollment Grant.
- (5) Students who obtain a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a Dual Enrollment Grant, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the award may be adjusted in the current award year.
- (6) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for award payment for distance education courses.
- (7) The grant will pay only for lower division (courses numbered 100-200 or 1000-2000) postsecondary credit for general education courses and courses in the disciplines. The grant will not pay for upper division courses (numbered 300-400 or 3000-4000).

Authority: T.C.A. §§ 49-4-201, **49-4-204**, 49-4-924, and 49-4-930. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009.

1640-01-19-.15 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS.

(Rule 1640-01-19-.15, continued)

- (1) On or before June 30 of each year, all eligible high schools shall submit the name, social security number, grade point averages, and highest composite ACT/SAT score on any single test date, for academically eligible students, cumulative through the eighth semester. Students who graduate from summer school shall have their information reported to TSAC on or before August 15 of each year.
- (2) Eligible postsecondary institutions that enroll students receiving scholarships or grants shall assist in providing and certifying student information necessary for administering, receiving, and evaluating such programs.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.16 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD.

- (1) All students receiving a TELS award shall reapply for the award by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-01-19-.03 for each subsequent year.
 - (a) During the certification process, all eligible postsecondary institutions shall certify the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award at the end of the semester at which the student has attempted twenty-four (24), forty-eight (48), seventy-two (72), ninety-six (96), or any subsequent multiple of twenty-four (24) semester hours thereafter or as described in T.C.A. § 49-4-911(a)(2).
 - (b) Notwithstanding the provisions of subparagraph (1)(a) above to the contrary, only those grades earned and credit hours attempted by a non-traditional student, after enrolling in accordance with Rule 1640-01-19-.05(7)(c), shall count toward the benchmark requirements.
- (2) In order to remain eligible for the HOPE Scholarship, the student must meet the minimum requirements pursuant to T.C.A. § 49-4-911.
- (3) Students who reach a benchmark during the summer semester shall have their continuing eligibility determined based upon the cumulative grade point average and semester grade point average, if required, as of the end of the summer semester.
- (4) Students entering into the provisions of T.C.A. § 49-4-911(a)(2) may enter into these provisions as a part-time student. However, upon receiving the award based on the provisions of T.C.A. § 49-4-911(a)(2), the student must maintain continuous enrollment each semester.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, 49-4-911, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public

(Rule 1640-01-19-.16, continued)

necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.

1640-01-19-.17 AWARD MADE IN ERROR.

- (1) If a student receives a TELS award and it is later determined that the award or some portion of the award was made in error, the student or the postsecondary institution may be required to repay the amount awarded in error.
- (2) If TSAC determines that the error was through no fault of the student, the student will not be required to repay the amount of the payment made in error.
- (3) Repayment from the student will be required if TSAC determines that fraud was committed or the error was through fault of the student. When repayment is required, the student may not receive additional student aid from ~~the Corporation~~TSAC until repayment is made.
- (4) Repayment from the postsecondary institution will be required if TSAC determines that the error was through the fault of the postsecondary institution.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.18 REFUND POLICY.

- (1) If a recipient of a TELS award or a Dual Enrollment Grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to ~~the Corporation~~TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to ~~the Corporation~~TSAC. Additionally, the eligible postsecondary institution shall notify ~~the Corporation~~TSAC of the chargeback, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from ~~the Corporation~~TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.19 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT.

- (1) Students enrolled in a full-time status, as of institutionally defined census date, may not convert to part-time status within the same semester and receive a scholarship award for the

(Rule 1640-01-19-.19, continued)

succeeding semesters unless the student requests and the institution approves the change to part-time status.

- (2) An institution may allow a change from full-time to part-time status within the same semester only when there are documented medical or personal grounds. Such medical or personal grounds shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, or other extraordinary circumstances beyond the student's control where continued full-time attendance by the student creates a substantial hardship.
- (3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time status within the semester. In the event an institution denies a student's request to change from full-time status to part-time status within a semester, the student may appeal the decision pursuant to Rule 1640-01-19-.26.
- (4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.
- (5) In the event the change to part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to ~~the Corporation~~TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to ~~the Corporation~~TSAC. Additionally, the eligible postsecondary institution shall notify ~~the Corporation~~TSAC of the chargeback, which shall be noted on the student's record.
- (6) For the purposes of this rule, only courses that are included in the calculation of the grade point average pursuant to Rule 1640-01-19-.22 are to be considered in determining full-time status.
- (7) In the event the student is eligible for the HOPE Scholarship as defined in T.C.A. § 49-4-911(a)(2) then the student shall maintain continuous enrollment on a semester-by-semester basis.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-911, 49-4-912, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.20 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance

(Rule 1640-01-19-.20, continued)

by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which he/she is enrolled. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-01-19-.26.

- (2) Students granted a medical or personal leave of absence who resume their education at an eligible postsecondary institution shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, 49-4-913, 49-4-919, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-.21 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS.

- (1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.
- (2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.
- (3) If due to a military mobilization the student elects to receive an "incomplete" in any or all courses, the provisions of Rule 1640-01-19-.22 shall apply.
- (4) Upon re-enrollment within one year following mobilization, the student's TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.
- (5) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.
- (6) Tennessee residents attending an out-of-state institution, otherwise eligible, shall not have their TELS award eligibility negatively impacted by military mobilization upon their return to the state as a transfer student attending an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, 49-4-913, 49-4-919, and 49-4-924. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.

1640-01-19-22 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE.

- (1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation, except as otherwise provided in this rule and as described in T.C.A. § 49-4-911.
 - (a) Notwithstanding the provisions of paragraph (1) above to the contrary, only those grades earned and credit hours attempted by a non-traditional student, after enrolling in accordance with Rule 1640-01-19-.05(7)(c), shall count toward the benchmark requirements.
- (2) All credit hours attempted at all postsecondary institutions the student has attended after graduating from high school and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Except as provided in subparagraph (a) of this paragraph, credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation.
 - (a) A student shall have a one-time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for both attempted courses, however, will be included in the overall number of attempted hours for determining HOPE Scholarship eligibility.
 - (b) It shall be the responsibility of the student to advise the appropriate official of the eligible postsecondary institution when this option is being exercised.
- (3) Grades received for courses attempted prior to high school graduation, completion of a home school program in Tennessee or GED attainment, including those attempted with the Dual Enrollment Grant, do not count in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.
- (5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility unless those hours are accepted toward a degree.
- (6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and in the attempted hours for determining HOPE Scholarship eligibility.
- (7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award or included in the attempted hours for determining HOPE Scholarship eligibility.
- (8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.

(Rule 1640-01-19-.22, continued)

- (9) A student who obtains a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his or her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded a TELS award retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over-award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, he or she may appeal the decision in accordance with Rule 1640-01-19-.26.
- (10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance education courses if all other eligibility requirements are met. Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance education courses shall be made in the same manner as transient students as provided in Rule 1640-01-19-.24.
- (11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student receives college credit from the internship or co-op experience and must pay tuition and fees. The semester hours shall be included in the postsecondary cumulative grade point average.
- (12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.
- (13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted. The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.
 - (a) If the student fails to retain eligibility for a TELS award as a result of the calculation of an incomplete, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-01-19-.26.
 - (b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.

(Rule 1640-01-19-.22, continued)

- (14) Courses in which a student withdraws shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.
- (15) Courses in which a student takes a pass/fail course shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, 49-4-911, 49-4-913, 49-4-919, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.

1640-01-19-.23 TRANSFER STUDENTS.

- (1) To be eligible for a Tennessee HOPE scholarship as a transfer student from a regionally accredited postsecondary institution located outside of Tennessee, a student shall meet the requirements of T.C.A. § 49-4-929.
- (2) Any student who was initially eligible for a Tennessee HOPE Scholarship or HOPE Access Grant but who instead of enrolling at either an eligible 2-year or 4-year postsecondary institution enrolled at a Tennessee Technology Center and obtained the Wilder-Naifeh Technical Skills Grant and completed a diploma program is eligible for a HOPE Scholarship at either an eligible 2-year or 4-year postsecondary institution. The student must apply for a HOPE Scholarship within three (3) years of completing the diploma program.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-910, 49-4-911, 49-4-924, 49-4-929, and 49-4-937. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.24 TRANSIENT STUDENTS.

- (1) A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions. The home institution shall award the TELS funds to the transient student based on certification of eligibility from the host institution. The home institution shall certify to ~~the Corporation~~ TSAC that the student is eligible for a TELS award. Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall notify its students of the process and the availability of the necessary forms to comply with the requirements. At the

(Rule 1640-01-19-.24, continued)

end of the semester, the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008.

1640-01-19-.25 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL.

- (1) A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-01-19-.05 may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons. Acceptable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where timely enrollment by the student would create a substantial hardship. In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to the Rule 1640-01-19-.26.

Authority: T.C.A. §§ 49-4-201, ~~49-4-204~~, 49-4-903, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008.

1640-01-19-.26 APPEAL AND EXCEPTION PROCESS.

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of rendering a decision in order to deny or revoke an applicant's TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a meeting and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a meeting is required, the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven (7) calendar days after meeting to consider an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision and reasons for the decision. The IRP shall provide a copy of the ~~written IRP decision letter~~ to the appellant as soon as practicable. ~~For the purposes of this rule, it will be presumed that the decision was delivered to the appellant two (2) calendar days after the decision was placed in the U.S. Postal Service addressed to the appellant's official mailing address according to the eligible postsecondary institution's records.~~

(Rule 1640-01-19-.26, continued)

- (2) The TELS Award Appeals Panel shall be appointed by ~~the Corporation's~~TSAC's Executive Director for the purpose of meeting to consider appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with ~~the Corporation-TSAC~~ within forty-five (45) calendar days from the date of the IRP decision letter. ~~that the decision was delivered to the student.~~ A complete record of the institutional IRP ruling shall be provided to ~~the Corporation-TSAC~~ by the student. The Appeals Panel may award or reinstate the student's TELS award without a meeting. This decision shall be made no later than thirty (30) calendar days after an appeal is properly filed and the record from the IRP meeting is received. If the Appeals Panel determines that a meeting is required the Appeals Panel shall consider the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant ~~prior to the expiration of the forty-five (45) day time period~~ and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after ruling on an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal.
- (3) A student may appeal directly to TSAC without first appealing to the IRP under the following circumstances:
- (a) Where the reason for the loss of eligibility occurred at a regionally-accredited out-of-state postsecondary institution and the student is now enrolled or attempting to enroll in an eligible postsecondary institution;
 - (b) Where the loss of eligibility occurs at one eligible postsecondary institution prior to the student transferring to another eligible postsecondary institution;
 - (c) Where a student has delayed postsecondary enrollment beyond sixteen (16) months after high school graduation;
 - (d) Where a student withdraws from an eligible postsecondary institution while seeking eligibility as a non-traditional student;
 - (e) Where a student is enrolled part-time and is seeking an extension to the five-year terminating event due to a documented medical disability as certified by a licensed physician; or
 - (f) At TSAC's discretion where the loss of eligibility was due to extraordinary circumstances.
- (34) The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or ~~the Corporation~~TSAC. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or ~~Corporation-TSAC~~ by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school or collegiate grade point average.

(Rule 1640-01-19-.26, continued)

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924. **Administrative History:** Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent
Governor Haslam, by Mr. Mark Cate	X			
Dr. Richard Rhoda	X			
Dr. Claude Pressnell	X			
Mr. David H. Lillard, Jr.	X			
Comptroller Justin P. Wilson	X			
Commissioner Larry Martin	X			
Commissioner Kevin Huffman, by Ms. Emily Carter	X			
Chancellor John Morgan	X			
Dr. Joe Dipietro, by Dr. Katie High	X			
Dr. Betty Sue McGarvey				X
Dr. J. Gary Adcox	X			
Mr. Jeff Gerkin	X			
Ms. Keri McInnis	X			
Dr. LaSimba Gray, Jr.				X
Mr. tom Hughes	X			
Ms. Sydney Jones				X
Mr. Daniel Webb				X

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 06/24/2014, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 6.27.14

Signature: Richard G. Rhoda

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director, Tennessee Student Assistance Corp.

Subscribed and sworn to before me on: 6-27-14

Notary Public Signature: Nicole J. LeMaster

My commission expires on: _____

MY COMMISSION EXPIRES:
November 3, 2015

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

8-22-14

Date

Department of State Use Only

Filed with the Department of State on: 8/27/14

Effective on: 11/25/14

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Health
<u>SUBJECT:</u>	Access to Controlled Substance Monitoring Database
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 53-10-303(f)
<u>EFFECTIVE DATES:</u>	November 27, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The Rule requires that those practitioners listed on the controlled substance monitoring database provide their supervising physician's driver license number and, in the event their supervising physician changes, to provide their new supervising physician's driver license number within 30 days of the change. According to the Department, the Rule is necessary to link providers with the provider's supervising physician as there is currently no other way to create the link in the database.</p>

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments, either written or oral.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (1) The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The proposed rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule or rules.**

The proposed rule exhibits clarity, conciseness, and lack of ambiguity in the rule.

- (3) The establishment of flexible compliance and/or reporting requirements for small businesses.**

All reporting requirements are the same for small and large businesses. The proposed rule does not contain any explicit penalty for noncompliance; a licensee that simply forgets to update their information or enters an incorrect number in the database accidentally will not be subject to discipline. However repeated or intentional noncompliance could be considered unprofessional conduct within the meaning of applicable laws and regulations that apply to impacted health professions.

- (4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

A flexible compliance schedule exists, licensees will have 30 days after the change in a supervisory relationship to report updated information to the database.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses.**

The reporting requirements allow for complete and accurate data to be reported to the database and the reporting requirement is the same for both small and large businesses.

- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

The proposed rule does not establish design or operational standards.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

The proposed rule creates no entry barriers or other effects that would stifle legitimate entrepreneurial activity, curb innovation, or increase costs for legitimate businesses.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Commissioner of Health

Rulemaking hearing date: 6/19/14

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

The proposed rule will affect every medical practice and small healthcare facility licensed in the state that employs advanced practice nurses and physician assistants with prescriptive authority, along with all medical practices or healthcare facilities that rely on healthcare extenders to check the CSMD. However, there are no compliance costs or benefits associated with the proposed rule.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

There are no administrative costs required for compliance with the proposed rule. A basic familiarity with computers is the only skill necessary for compliance.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The proposed rule is unlikely to have an impact on small businesses or consumers. Compliance with the rule will require only a few moments of time. Information will be updated when supervisory relationships change, but this should only take a couple minutes at most (each time). A medical practice or facility which experiences an extremely high turnover of physicians, supervised prescribers (advance practice nurses, physician assistants), or healthcare extenders may be impacted, but such circumstances are unusual and are not likely to exist at a majority of impacted businesses.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

Due to the system architecture of the CSMD, there are no less burdensome, intrusive, or costly alternative methods of achieving the purpose and objectives of the proposed rule.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: N/A

State: N/A

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

An exemption for small businesses would totally frustrate the purpose of the proposed rule. The proposed rule is intended to link healthcare practitioners with prescriptive authority and healthcare extenders with supervising physicians. This makes investigations and enforcement of the Legislature's laws difficult. Granting an exemption for small businesses would leave us where we are currently, since a majority of healthcare practitioners with prescriptive authority and healthcare extenders work in small businesses (private medical practices).

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected financial impact on local governments."

The proposed rule amendments should not have a financial impact on local governments.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 08-25-14
Rule ID(s): 5792
File Date: 8-29-14
Effective Date: 11-27-14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission: Department of Health
Division: Controlled Substance Monitoring Database
Contact Person: Stefan Cange
Address: 665 Mainstream Drive, Nashville, Tennessee
Zip: 37234
Phone: (615) 741-1611
Email: Stefan.Cange@tn.gov

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1140-11	Controlled Substance Monitoring Database
Rule Number	Rule Title
1140-11-.02	Access to Database

(Rule 1140-11-.01, continued)

(m) "Healthcare practitioner" means:

1. a physician, dentist, optometrist, veterinarian, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense or administer a controlled substance in the course of professional practice; or
2. a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, or administer a controlled substance in the course of professional practice;

(n) "Healthcare practitioner extender" means any registered or licensed healthcare professional, and up to two (2) unlicensed persons designated by the prescriber or dispenser, who act as agents of the prescriber or dispenser. The prescriber or dispenser shall be responsible for all actions taken by the agents, pursuant to this part;

(o) "Law enforcement personnel" means agents of the Tennessee Bureau of Investigation, agents of a judicial district drug task force, federal law enforcement officers commissioned by a federal government entity, certified law enforcement officers certified pursuant to T.C.A. § 38-8-107, and certified law enforcement officers in other states;

(p) "Patient" means a person or an animal who is receiving medical treatment from a prescriber;

(q) "Patient identifier" means the patient's full name; address including zip code; date of birth; and social security number or an alternative identification number as defined by this rule;

(r) "Person" means any individual, partnership, association, corporation and the state of Tennessee, its departments, agencies and employees, and the political subdivisions of Tennessee and their departments, agencies and employees;

(s) "Prescriber" means an individual licensed as a medical doctor, podiatrist, dentist, optometrist, veterinarian, osteopathic physician, a physician assistant who has authority to issue prescriptions for controlled substances, or an advanced practice nurse with a certificate of fitness to prescribe;

(t) "Prescriber identifier" means the Drug Enforcement Administration Registration Number of the prescriber as defined by this rule.

Authority: T.C.A. §§ 53-10-302 and 53-10-303(f). **Administrative History:** Original rule filed December 22, 2005; effective March 7, 2006. Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.

1140-11-.02 ACCESS TO DATABASE.

- (1) All prescribers with DEA numbers who prescribe controlled substances, and all dispensers in practice who provide direct care to patients in Tennessee for more than fifteen (15) calendar days per year, shall be registered in the database. New licensees shall have up to thirty (30) calendar days after notification of licensure to register in the database. Licensed veterinarians who never prescribe a controlled substance in an amount intended to treat a non-human patient for more than forty-eight (48) hours shall not be required to register in the database.

(a) All healthcare practitioner extenders, physician assistants, or advanced practice nurses with a certificate of fitness to prescribe that is registered in the database shall also

(Rule 1140-11-.02, continued)

submit to the database, within thirty (30) calendar days of registration, their supervising physician's driver's license number.

(b) When under the supervision of a new physician, the health care practitioner extender, physician assistant, or advanced practice nurse with a certificate of fitness to prescribe shall have thirty (30) calendar days from the date this change occurs to submit the new supervising physician's driver's license number.

- (2) Information sent to, contained in, and reported from the database in any format shall be made available only as provided for in T.C.A. § 53-10-306 and to the following persons in accordance with this chapter:
- (a) A prescriber conducting medication history reviews who is actively involved in the care of a patient or a bona fide prospective patient; a prescriber or supervising physician of the prescriber conducting a review of all medications dispensed by prescription attributed to that prescriber; or a prescriber having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective patient of the prescriber, to whom the prescriber has prescribed or dispensed, is prescribing or dispensing, or considering prescribing or dispensing any controlled substance. Each authorized individual under this paragraph shall have a separate identifiable authentication for access;
 - (b) A dispenser or pharmacist not authorized to dispense controlled substances conducting drug utilization or medication history reviews who is actively involved in the care of a patient; or a dispenser having authority to dispense controlled substances to the extent the information relates specifically to a current or bona fide prospective patient to whom that dispenser has dispensed, is dispensing, or considering dispensing any controlled substance. Each authorized individual under this paragraph shall have a separate identifiable authentication for access;
 - (c) A county medical examiner appointed pursuant to T.C.A. § 38-7-104 when acting in an official capacity as established in T.C.A. § 38-7-109;
 - (d) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as part of their assigned duties and responsibilities directly related to TennCare:
 - 1. The Office of the Inspector General;
 - 2. The Medicaid Fraud Control Unit; and
 - 3. The Bureau of TennCare's Chief Medical Officer, Associate Chief Medical Directors, Director of Quality Oversight, and Associate Director of Pharmacy.
 - (e) A quality improvement committee, as defined in T.C.A. § 68-11-272, of a hospital licensed under T.C.A. title 68 or title 33, as part of the committee's confidential and privileged activities under T.C.A. § 68-11-272(b)(4) with respect to the evaluation, supervision or discipline of a healthcare provider employed by the hospital or any of its affiliates or subsidiaries, who is known or suspected by the hospital's administrator to be prescribing controlled substances for the prescriber's personal use;
 - (f) A healthcare practitioner extender, who is acting under the direction and supervision of a prescriber or dispenser, and only to the extent the information relates specifically to a current or bona fide prospective patient to whom the prescriber or dispenser has prescribed or dispensed, or considering prescribing or dispensing any controlled

(Rule 1140-11-.02, continued)

substance. Each authorized individual under this paragraph shall have a separate identifiable authentication for access, and the prescriber or dispenser shall cancel the healthcare practitioner extender's access to the database upon the end of the agency relationship;

- (g) A manager of any investigation or prosecution unit of a health related board, committee or other governing body that licenses practitioners, who has access to the database with the committee's permission pursuant to T.C.A. § 53-10-308. Such manager may release the database information to the state of Tennessee health related boards, health related committees, the department, and representatives of health-related professional recovery programs;
 - (h) The following personnel of the Department of Mental Health and Substance Abuse Services, who are actively engaged in analysis of controlled substance prescription information, as part of their assigned duties and responsibilities. These personnel shall have access to prescription information for specific patients. Additionally, aggregate controlled substances prescribing information may be provided to these personnel and may be shared with other personnel of the Department of Mental Health and Substance Abuse Services as needed to fulfill the assigned duties and responsibilities:
 - 1. The Chief Pharmacist;
 - 2. The State Opioid Treatment Authority (SOTA) or SOTA designees; and
 - 3. The Medical Director; or
 - (i) A person who has the patient's written permission to have access to the patient's records in the database.
- (3) Law enforcement personnel engaged in an official investigation and enforcement of state or federal laws involving controlled substances or violations of T.C.A., Title 53, Chapter 10, part 3 may access information contained in the database pursuant to this chapter.
 - (4) Law enforcement agencies and personnel seeking or receiving information from the database pursuant to this section shall comply with the following requirements:
 - (a) Any law enforcement agency or judicial district drug task force that requires one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff, or the judicial district drug task force district attorney general in the judicial district in which the agency or task force has jurisdiction. By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year.
 - (b) If the Tennessee Bureau of Investigation (TBI) requires one (1) or more of its agents to have the authorization to request information from the database, each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board of pharmacy by the TBI director. By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information from the database from the bureau for the next calendar year.
 - (c) An application submitted by law enforcement personnel shall include at least the following:

(Rule 1140-11-.02, continued)

1. Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate district attorney general and, if a TBI agent, the TBI director and their email addresses; and
 2. Signatures of the applicant, the applicant's approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving TBI division head and the TBI director.
- (d) When requesting information from the database, law enforcement personnel must provide a case number corresponding with an official investigation involving controlled substances.
- (e) Law enforcement personnel, including judicial district drug task force agents and TBI agents, who are authorized to request information from the database, shall resubmit their identifying application information that was submitted pursuant to subparagraph (4)(c) to the appropriate district attorney general or to the TBI director, by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general or the TBI director to the board of pharmacy by December 1 each year. If during the calendar year, a name is added to the list, removed from the list, or information about a person on the list changes, the appropriate district attorney general or TBI director shall immediately notify the board of pharmacy of any changes to the list submitted or in the information submitted for each officer or agent on the list application.
- (5) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information, and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.
- (6) Any information obtained from the database that is sent to a law enforcement official or judicial district drug task force agent shall also be sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.
- (7) Information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.
- (8) If a law enforcement officer, judicial district drug task force agent, or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist is believed to have acted or is acting unlawfully or to the health related boards' investigations unit if a prescriber is believed to have acted or is acting unlawfully.
- (9) At least every six (6) months, the board of pharmacy shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district.

(Rule 1140-11-.02, continued)

Likewise, a list shall be sent to the TBI director for all TBI agents making requests during the previous six (6) months.

- (a) Each district attorney general and the TBI director shall use the list to verify database requests made during the preceding six (6) month period, and conduct an audit in accordance with T.C.A. § 53-10-306(j)(2). Verification of all database requests on the list received by each district attorney general and the TBI director must be sent back to the board of pharmacy within sixty (60) days of receipt. Where database information requests do not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to such an investigation, the district attorney general or TBI director shall so note on the verified list and shall investigate and make a report to the board of pharmacy within sixty (60) days.
- (b) The results of the audit shall be discoverable by a prescriber, dispenser, or healthcare practitioner extender charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by an appropriate licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber, dispenser, or healthcare practitioner extender are discoverable. If, however, there is an active criminal investigation involving a prescriber, dispenser, or healthcare practitioner extender, or the prescriber, dispenser, or healthcare practitioner extender is under investigation by any investigations or prosecution unit of the appropriate licensing board, the results of the audit shall not be discoverable by the prescriber, dispenser, or healthcare practitioner extender during either such period.

Authority: T.C.A. §§ 53-10-303(f), 53-10-304(b), 53-10-305(e), 53-10-306, and 53-10-308.

Administrative History: Original rule filed December 22, 2005; effective March 7, 2006. Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.

1140-11-.03 ALTERNATIVE IDENTIFICATION OF PATIENTS.

- (1) If a patient does not have a social security number or refuses to provide his or her social security number to be used as a patient identifier, then the board shall use the patient's driver's license number or telephone number as the patient identifier in the database.
- (2) If a patient does not have a social security number, a driver's license number or a telephone number, then the board shall use the number "000-00-0000" as the patient identifier in the database.
- (3) If a patient or a patient's agent refuses to provide his or her social security number, driver's license number or telephone number to his or her prescriber or dispenser, then the board shall use the number "999-99-9999" as the patient identifier in the database.
- (4) If a patient's social security number is not available, then the board shall use the social security number, driver's license number or telephone number of the person obtaining the controlled substance on behalf of the patient as the patient identifier in the database or the numbers "000-00-0000" (does not have the data) or "999-99-9999" (refusal to provide data), as applicable.
- (5) If a patient is a child who does not have a social security number, then the board shall use the parent's or guardian's social security number, driver's license number, telephone number, or number "000-00-0000" (does not have data) or number "999-99-9999" (refusal to provide data) as the patient identifier in the database.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Health (board/commission/ other authority) on 07/14/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/16/14 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 07/14/14 (mm/dd/yy)

Date:

Signature:

Name of Officer: Stefan Cange

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on:

Notary Public Signature:

My commission expires on:

MY COMMISSION EXPIRES
APRIL 19, 2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: 8-29-14

Effective on: 11-27-14

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION: Board of Osteopathic Examination

SUBJECT: Continuing Education Requirements and Mammography Records

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 68-11-305, 63-2-103, 63-9-101, and 63-9-107

EFFECTIVE DATES: November 27, 2014 through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Rule increases, from one to two hours, the number of hours out of the required 40 continuing education hours that must be designated specifically to address prescribing practices in the practice of osteopathy.

The Rule deletes the requirement to retain mammography records for 20 years, and requires instead that mammography imaging and reports be maintained for 10 years.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments submitted at the public hearing on the proposed rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

REGULATORY FLEXIBILITY ANALYSIS

- (1) **The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The proposed rule does not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

The compliance and reporting requirements established in the proposed rule are uniform for all licensed physicians and are as flexible as possible while achieving the Board's mission to protect the public and ensure competent licensees.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

The compliance and reporting requirements established in these proposed rules are uniform for all licensed physicians and are as friendly and flexible as possible while achieving the Board's mission to protect the public and ensure competent licensees.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

Compliance requirements contained in the rules are the same for all licensed physicians.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

The proposed rule does not establish performance, design, or operational standards.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

The proposed rule does not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

All licensed osteopathic physicians will be subject to the proposed rule amendment. The rule amendment does not increase the total required hours of continuing medical education (CME). The proposed rule amendment will affect approximately 1,097 licensees.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

The proposed rule amendment does not affect the reporting requirements or other administrative costs for compliance. Osteopathic physicians are already required to report and retain for compliance documentation of completion of all CME hours, and this rule amendment does not alter those requirements.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The proposed rule amendment should have little effect on small businesses. Although there is an increased requirement that two of the forty CME hours must be related to the prescribing of controlled substances, the number of CME hours remains at forty hours biennially.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

The proposed rule amendment is not burdensome, intrusive, or costly.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: The United States Code Annotated has requirements for military physicians to complete applicable continuing medical education requirements.

State: Almost all health related boards have some type of continuing education requirements.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

The proposed rule amendment should not provide an exemption for small businesses as the rule amendment is necessary to protect the public and to ensure competent licensees.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected financial impact on local governments."

The proposed rule amendments should not have a financial impact on local governments.

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For Department of State Use Only

Sequence Number: 08-26-14
Rule ID(s): 5793
File Date: 08-29-14
Effective Date: 11-27-14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission: Board of Osteopathic Examination

Division:

Contact Person: Devin M. Wells
Deputy General Counsel

Address: 665 Mainstream Drive
Nashville, TN 37243

Zip: 37243

Phone: 615-741-1611

Email: Devin.M.Wells@tn.gov

Revision Type (check all that apply):

☒ Amendment

☐ New

☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1050-02	General Rules and Regulations Governing the Practice of Osteopathy
Rule Number	Rule Title
1050-02-.12	Continuing Education Requirements
1050-02-.18	Medical Records

(Rule 1050-02-.11, continued)

provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-111. **Administrative History:** Original rule filed April 10, 2000; effective June 24, 2000.

1050-02-.12 CONTINUING EDUCATION REQUIREMENTS.

(1) Hours Required, Waiver, and Exemptions

(a) During the two (2) calendar years that precede licensure renewal, all licensees must complete forty (40) hours of courses approved by the Board in Category I-A, II-A and/or I-B continuing medical education as defined in the most current annual American Osteopathic Association Yearbook and Directory.

~~(b) At least one (1) of the forty (40) required hours shall be a course designed specifically to address prescribing practices. The course should include, but not be limited to, instruction on controlled substance prescribing practices.~~

(b) At least two (2) of the forty (40) required hours shall be a course(s) designated specifically to address prescribing practices. The course(s) should include, but not be limited to, instruction on controlled substance prescribing practices.

(c) Osteopathic physicians serving as preceptors in any AOA approved osteopathic medical education program may be granted one (1) Category I-B credit for each hour of preceptor work actually performed, up to a maximum of fifty percent (50%) of the total biennially required continuing medical education.

(d) The Board approves a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.

(e) Waiver - The Board may waive the requirements of these rules in cases where illness, disability, or other undue hardship beyond the control of the licensee prevents a licensee from complying. Requests for waivers must be sent in writing to the Board prior to the expiration of the calendar year in which the continuing medical education is due.

(f) Exemptions:

1. Anyone whose license is in the retired status pursuant to rule 1050-02-.08 is exempt from the requirements of these continuing medical education rules.
2. Anyone who obtains licensure in the same calendar year as successful completion of the NBOME, COMLEX, or the USMLE Step 3 is exempt from the provisions of these continuing medical education rules but only for the calendar year in which licensure is issued.

(2) Proof of Compliance - All licensees must retain independent documentation of completion of all continuing medical education hours and compliance with the provisions of these rules.

(a) This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing medical education was acquired.

(Rule 1050-02-.12, continued)

- (b) This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process.
- (c) Documentation verifying the licensee's completion of the continuing medical education hours may consist of any one (1) or more of the following:
 - 1. Original certificates verifying the individual's attendance at the continuing education programs described above.
 - 2. Original letters on official institution stationery or photocopies of original letters on official institution stationery from the instructor of the graduate level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual; or
 - 3. Documentation from the American Academy of Family Physicians (hereafter AAFP) indicating acquired continuing medical education hours; or
 - 4. Official transcript verifying credit hours earned. One (1) semester academic credit hour is equivalent to fifteen (15) clock hours for the purpose of licensure renewal. Credit for auditing will be for the actual clock hours in attendance, not to exceed the academic credit.
- (3) Acceptable Continuing Education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education hours must comply with the following:
 - (a) They must be approved in content, structure and/or format by the A.O.A., or by the Accreditation Council for Continuing Medical Education (A.C.C.M.E.) or by a state medical association recognized by the A.C.C.M.E. as an intrastate accreditor of sponsors of continuing medical education; or
 - (b) They must be designated by the AAFP as meeting the criteria of the AAFP's prescribed credit.
- (4) Violations and Disciplinary Orders
 - (a) Any licensee who fails to obtain the required continuing medical education hours or otherwise comply with the provisions of these rules will be subject to disciplinary action.
 - (b) Continuing medical education hours obtained as a result of compliance with the terms of Board Orders in any disciplinary action or obtained pursuant to licensure or renewal restriction/conditions mandated by the Board shall not be credited toward the continuing medical education hours required to be obtained in any calendar year.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-107. **Administrative History:** Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed October 2, 2002; effective December 16, 2002. Amendment filed April 17, 2007; effective July 1, 2007. Amendments filed August 27, 2009; effective November 25, 2009.

1050-02-.13 SPECIFICALLY REGULATED AREAS AND ASPECTS OF MEDICAL PRACTICE.

- (1) The scope of practice of osteopathic physicians in Tennessee is broadly defined in the Osteopathic Medical Act and promulgated rules and includes many aspects which if not particularly regulated could lead to serious ramifications for the consuming public. This rule

(Rule 1050-02-.17, continued)

Board approved credentialing service to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-9-104, and 63-9-111. **Administrative History:** Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed March 14, 2006; effective May 28, 2006.

1050-02-.18 MEDICAL RECORDS.

- (1) Purposes - The purposes of these rules are:
 - (a) To recognize that medical records are an integral part of the practice of osteopathic medicine as defined in T.C.A. § 63-9-106.
 - (b) To give physicians, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
 - (c) To recognize that a distinction exists between a physician's medical records for a patient receiving services in the physician's office and those records created by the physician for that patient for purposes of services provided in a hospital as defined by T.C.A. § 68-11-302 (4) and that the distinction exists regardless of the fact that the physician may also be an employee of the hospital or of a medical group employed or owned by the hospital.
- (2) Conflicts - As to medical records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.
- (3) Applicability - These rules regarding medical records shall apply only to those records, the information for which was obtained by physicians or their professionally licensed employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Medical Records -
 - (a) Duty to Create and Maintain Medical Records - As a component of the standard of care and of minimal competency a physician must cause to be created and cause to be maintained a medical record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation.
 - (b) Notice - Anywhere in these rules where notice is required to be given to patients of any physician that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement, and may be accomplished by public notice.
 - (c) Distinguished from Hospital Medical Records - The medical records covered by these rules are separate and distinct from those records generated for the patient by the physician during the course of providing medical services for the patient in a hospital as defined by T.C.A. § 68-11-302 (4) regardless of the fact that the physician may also be an employee of the hospital or of a medical group employed or owned by the hospital.

(Rule 1050-02-.18, continued)

1. The provisions of T.C.A. Title 68, Part 11, Chapter 3 govern medical records generated in a hospital as defined by T.C.A. § 68-11-302 (4).
 2. The medical records covered by these rules are those:
 - (i) That are created prior to the time of the patient's admission to or confinement and/or receipt of services in a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room and/or hospital outpatient facility, and/or
 - (ii) That are created after the patient's discharge from a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.
 - (iii) That are created during the practice of medicine as defined by T.C.A. § 63-6-204 outside of a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.
 3. Even though the records covered by these rules may, of necessity, reference provision of services in the hospital setting and the necessary initial work-up and/or follow-up to those services, that does not make them "hospital records" that are regulated by or obtainable pursuant to T.C.A. Title 68, Part 11, Chapter 3.
- (d) Content - All medical records, or summaries thereof, produced in the course of the practice of medicine for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating physician can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.
- (e) Transfer -
1. Records of Physicians upon Death or Retirement - When a physician retires or dies while in practice, patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months shall be notified by the physician, or his/her authorized representative and urged to find a new physician and be informed that upon authorization, copies of the records will be sent to the new physician. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
 2. Records of Physicians upon Departure from a Group - The responsibility for notifying patients of a physician who leaves a group practice whether by death, retirement or departure shall be governed by the physician's employment contract.
 - (i) Whomever is responsible for that notification must notify patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months of his/her departure, except that this notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
 - (ii) Except where otherwise governed by provisions of the physician's contract, those patients shall also be notified of the physician's new address and

(Rule 1050-02-.18, continued)

offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice. Provided however, a group shall not withhold the medical records of any patient who has authorized their transfer to the departing physician or any other physician.

- (iii) The choice of physicians in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the physician of the patient's choice.
- 3. Sale of a Medical Practice - A physician or the estate of a deceased physician may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the physician's medical records. Therefore, the transfer of records of patients is subject to the following:
 - (i) The physician (or the estate) must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality as provided in these rules.
 - (ii) Patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months shall be notified that the physician (or the estate) is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another physician or entity of their choice. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
- 4. Abandonment of Records - For purposes of this section of the rules death of a physician shall not be considered as abandonment.
 - (i) It shall be a prima facie violation of T.C.A. § 63-9-111 (b) (1) for a physician to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
 - (ii) Upon notification that a physician in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records patients should take all reasonable steps to obtain their medical records by whatever lawful means available and should immediately seek the services of another physician.
- (f) Retention of Medical Records - Medical records shall be retained for a period of not less than ten (10) years from the physician's or his supervisees' last professional contact with the patient except for the following:
 - 1. Immunization records shall be retained indefinitely.
 - 2. Medical records for incompetent patients shall be retained indefinitely.
 - ~~3. Mammography records shall be retained for at least twenty (20) years.~~
 - 3.4. X-rays, radiographs and other imaging products shall be retained for at least four (4) years after which if there exist separate interpretive records thereof they may

(Rule 1050-02-.18, continued)

be destroyed. However, mammography imaging and reports shall be maintained for ten (10) years.

~~4.5.~~ Medical records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the physician's or his supervisees' last professional contact with the patient, whichever is longer.

~~5.6.~~ Notwithstanding the foregoing, no medical record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(g) Destruction of Medical Records -

1. No medical record shall be singled out for destruction other than in accordance with established office operating procedures.
2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

- (5) Violations - Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-9-111 (b) (1), and/or (2).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-9-101, 63-9-106, and 63-9-111.

Administrative History: Original rule filed July 27, 2000; effective October 10, 2000. Repeal and new rule filed April 29, 2003; effective July 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005.

1050-02-.19 MEDICAL PROFESSIONAL CORPORATIONS AND MEDICAL PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Medical Professional Corporations (MPC) – Except as provided in this rule Medical Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
- (a) Filings – A MPC need not file its Charter or its Annual Statement of Qualifications with the Board.
- (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic MPC doing business in Tennessee:
1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in another state; and/or

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jill Robinson, DO	X				
Jeffrey Hamre, DO	X				
Donald H. Polk, DO	X				
Robert Fletcher Lance				X	
Karen R. Shepherd, DO	X				
Jack G. Pettigrew, DO	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Osteopathic Examination (board/commission/ other authority) on 11/06/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/05/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/13 (mm/dd/yy)

Date: 5-15-2014

Signature: [Signature]

Name of Officer: Devin M. Wells

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 8-15-14

Notary Public Signature: [Signature]

My commission expires on: APRIL 19, 2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
8-22-14

Date

Department of State Use Only

Filed with the Department of State on: 08-29-14

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Effective on: 11-27-14



Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Tennessee Board of Regents
<u>SUBJECT:</u>	Classifying Students In-State and Out-of-State
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Title 49, Chapter 7, Part 13 and Section 49-8-104
<u>EFFECTIVE DATES:</u>	August 4, 2014 through January 31, 2015
<u>FISCAL IMPACT:</u>	<p>The Board estimates that implementation of the Emergency Rules will result in a net increase in state revenue as follows:</p> <p>Fiscal Year 2014-15 - \$149,200 Fiscal Year 2015-16 - \$158,200 Fiscal Year 2016-17 and subsequent fiscal years - \$167,700</p>
<u>STAFF RULE ABSTRACT:</u>	<p>The Emergency Rules implement Chapter 745 of the Public Acts of 2014 by classifying a student as "in-state" for fee and tuition purposes at Board of Regents higher education institutions if the student is a U.S. citizen, has resided in Tennessee for at least one year immediately prior to admission and has either graduated from a public or private Tennessee secondary school or earned a Tennessee high school equivalency diploma.</p> <p>The Emergency Rules implement Chapter 612 of the Public Acts of 2014 (the "Tennessee VETS Act") by exempting veterans who meet certain initial and continuing eligibility requirements from being required to pay out-of-state tuition and fees at Board of Regents higher education institutions. In order to be exempt from out-of state tuition, the veteran must:</p> <ol style="list-style-type: none">1. Not have been dishonorably discharged;2. Be eligible for Post-9-11 GI Bill benefits or Montgomery GI Bill benefits; and3. Enroll in the institution, after satisfying admission requirements, within 24 months of discharge.

In order to continue to qualify for the exemption from out-of-state tuition, a veteran must maintain continuous enrollment in the higher education institution and evidence the intent to be a Tennessee resident.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact on local governments

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Rule ID(s): 5781
File Date (effective date): 8/4/14
End Effective Date: 11/31/15

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Board of Regents
Division:	Systemwide Student Rules
Contact Person:	Mary G. Moody
Address:	Office of General Counsel 1415 Murfreesboro Rd. Ste. 336 Nashville, Tennessee
Zip:	37217
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

Rule Type:

☒ Emergency Rule

Revision Type (check all that apply):

☒ Amendment

☐ New

☐ Repeal

Statement of Necessity:

The Tennessee Board of Regents is subject to the enactment of 2014 Public Act 745, effective July 1, 2014, for the school year 2014-2015, which allows In-State classification for fees and tuition of students who are U.S. citizens, and meet statutory requirements set forth in the Act.

The Tennessee Board of Regents is subject to the enactment of 2014 Public Act 612, effective July 1, 2014, for the school year 2014-2015, which allows Veterans In-State classification for fees and tuition, subject to statutory requirements set forth in the ACT.

The implementation of these rules within the required time period to implement these rules for the next applicable higher education semester enrollment precludes utilization of rulemaking procedures described in Tennessee Code Annotated, Title 4, Chapter 5, Part 2 for the promulgation of permanent rules.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0240-02-02	Classifying Students In-State and Out-of-State
Rule Number	Rule Title
0240-02-02-.03	Rules for Determination of Status
0240-02-02-.04	Out-of-State Students Who are Not Required to Pay Out-of-State Tuition

Chapter 0240-02-02
Classifying Students In-State and out-of-State
Amendments

0240-2-2-.03 RULES FOR DETERMINATION OF STATUS.

- (3) The domicile of an unemancipated person is that of his or her parent, except as provided in paragraph (5) of this rule.
- (4) Unemancipated students of divorced parents shall be classified as "in-state" when one parent, regardless of custodial status, is domiciled in Tennessee, except as provided in paragraph (5) of this rule.
- (5) A student is classified "in-state" for fee and tuition purposes if the student is a citizen of the United States, has resided in Tennessee for at least one (1) year immediately prior to admission and has:
 - (a) Graduated from a Tennessee public secondary school;
 - (b) Graduated from a private secondary school that is located in this state; or
 - (c) Earned a Tennessee high school equivalency diploma.
- (6) The spouse of a student classified as "in-state" shall also be classified as "in-state", subject to the requirements of T.C.A. Title 4, Chapter 58.

Authority: T.C.A. §49-8-104 and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 7, 1995; effective December 29, 1995. Amendment filed August 11, 2004; effective December 29, 2004.

0240-2-2-.04 OUT-OF-STATE STUDENTS WHO ARE NOT REQUIRED TO PAY OUT-OF- STATE TUITION.

- (13) A veteran enrolled in any Tennessee Board of Regents (TBR) institution of higher education in this state shall not be required to pay out-of-state tuition or any out-of-state fee, if the veteran:
 - (a) Has not been dishonorably discharged from a branch of the United States armed forces or the National Guard;
 - (b) Is eligible for Post-9/11 GI Bill benefits or Montgomery GI Bill benefits; and
 - (c) Enrolls in the TBR institution, after satisfying all admission requirements, within twenty-four (24) months after the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document.
- (14) To continue to qualify for in-state tuition and fees, a veteran shall:
 - (a) Maintain continuous enrollment as defined by the TBR institution at which the veteran is enrolled; and
 - (b) Within one (1) year of enrolling in the TBR institution:
 - 1. Register to vote in this state; or
 - 2. Demonstrate by objective evidence intent to be a resident of this state by obtaining at least two (2) of the following:
 - (i) A Tennessee driver license;

(ii) A Tennessee motor vehicle registration;

(iii) Proof of established employment in the state; or

(iv) Other documentation clearly evidencing domicile or residence in the state, as determined by the Tennessee Higher Education Commission.

Authority: T.C.A. §§49-8-104 and 49-8-203. Public Chapter No. 612, Tennessee Veterans Education Transition Support Act. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed July 29, 1986; effective October 29, 1986. Amendment filed July 29, 1988; effective October 29, 1988. Amendment filed February 8, 1989; effective May 29, 1989. Amendment filed August 7, 1995; effective December 29, 1995. Amendment filed August 11, 2004; effective December 29, 2004.

The Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Gregory M. Duckett	X				
John M. Farris	X				
Darrell Freeman	X				
Tom Griscom				X	
Commissioner Kevin Huffman	X				
Commissioner Julius Johnson	X				
Jonas Kisber	X				
Fran F. Marcum				X	
Rebecca Reeves	X				
Emily Reynolds	X				
Howard Roddy	X				
Parker Smith				X	
Johnny Stites	X				
Robert P. Thomas	X				
Danni Varlan	X				
Dotty Webb	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 7-15-2014

Signature: _____

Name of Officer: Mary G. Moody

Title of Officer: General Counsel and Board Secretary



Subscribed and sworn to before me on: 7-15-14

Notary Public Signature: _____

My commission expires on: 2-6-2017

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

7-30-14

Date

Department of State Use Only

Filed with the Department of State on: 8/4/14

Effective for: 180 *days

Effective through: 1/31/15

* Emergency rule(s) may be effective for up to 180 days from the date of filing.



Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	State
<u>DIVISION:</u>	Charitable Solicitations and Gaming
<u>SUBJECT:</u>	Procedures for Operating Charitable Gaming Events
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Title 3, Chapter 17
<u>EFFECTIVE DATES:</u>	August 8, 2014 through February 4, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The Emergency Rules change the deadline for submitting applications to hold an annual gaming event from December 31 of each year to January 31 preceding the annual event period.</p> <p>The Emergency Rules remove the requirement that an applicant must include with their application either a copy of the minutes from a board meeting at which the application was authorized or an affidavit signed by all of the applicant's directors. The Emergency Rules instead specify that an applicant's board or, if authorized by their bylaws, executive committee must authorize the filing of the application.</p> <p>The Emergency Rules establish a process for modifying the price of annual gaming event tickets prior to any tickets being sold, provided, that price modification may only occur once and may only be within \$50.00 of the dollar amounts listed in the approved application.</p> <p>The Emergency Rules authorize selling annual gaming event tickets at different value levels or tiers.</p>

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules do not have a projected impact on local governments.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 08-10-14
Rule ID(s): 5785
File Date (effective date): 8/8/14
End Effective Date: 2/4/15

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of State
Division:	Charitable Solicitations and Gaming
Contact Person:	Brent Culberson
Address:	312 Rosa L. Parks Ave., 8 th Floor, Nashville, TN
Zip:	37243
Phone:	741-2555
Email:	Brent.Culberson@tn.gov

Rule Type:

☒ Emergency Rule

Revision Type (check all that apply):

☒ Amendment

☒ New

☒ Repeal

Statement of Necessity:

The agency is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for the promulgation of permanent rules. Chapter 699 of the Public Acts of 2014 was made effective July 1, 2014, and these proposed rules are necessary to bring the regulations in line with the new statute.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1360-03-03	Procedures for Operating Charitable Gaming Events
Rule Number	Rule Title
1360-03-03-.03	Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications
1360-03-03-.06	Action by Board of Directors
1360-03-03-.07	Application Correction and Amendment Process
1360-03-03-.08	Sale of Tickets, Shares, Chances or Other Similar Records
1360-03-03-.09	Conduct of the Games
1360-03-03-.10	Criminal Background Checks
1360-03-03-.11	Accounting Procedures
1360-03-03-.12	Proof that Event Proceeds Were Used for a Charitable Purpose
1360-03-03-.13	Disqualifications/Civil Penalties
1360-03-03-.14	Co-Operation with Other State Agencies

**RULES
OF
TENNESSEE DEPARTMENT OF STATE
DIVISION OF CHARITABLE SOLICITATIONS
CHARITABLE GAMING SECTION**

**CHAPTER 1360-03-03
PROCEDURES FOR OPERATING CHARITABLE GAMING EVENTS**

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1360-03-03-.03	Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications	1360-03-03-.1009	Criminal Background Checks
		1360-03-03-.110	Accounting Procedures
		1360-03-03-.124	Proof that Event Proceeds Were Used for a Charitable Purpose
1360-03-03-.04	Proof of Active and Continuous Existence	1360-03-03-.132	Disqualifications/Civil Penalties
1360-03-03-.05	Proof of §501(c)(3) Tax Exempt Status and Purpose(s)	1360-03-03-.143	Co-operation with Other State Agencies
1360-03-03-.06	Action Approval by Board of Directors		
1360-03-03-.07	Application Correction and Amendment Process		

1360-03-03-.01 DEFINITIONS.

- (1) "Amended annual event application" means those items of information submitted to the Secretary for the purpose of revising, correcting, adding to, or otherwise supplementing an annual event application in order to meet the requirements of the Tennessee Charitable Gaming Implementation Law.
- (2) "Conformed copy" A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy shall contain the signatures and dates as shown on the originals. A certificate of incorporation shall be date stamped and show approval by an appropriate state official.
- (3) "Compensation" for purposes of T.C.A. § 3-17-103(a)5(A)(i)(b) means anything of value received as a result of work performed on behalf of a §501(c)(3) organization, including, but not limited to, tips, reductions, and waivers of fees.
- (4) "Directors or officers of the organization" for purposes of T.C.A. §3-17-104 (a)(12) means the entire slate of members of the governing body of an organization. An executive committee or subcommittee of a governing board shall not qualify as the directors or officers of the organization, unless the organization's by-laws authorize an executive committee to act on behalf of the full board.
- (5) "Fair Market Value" means a price at which an unrelated buyer and seller would agree to a transaction; a valuation that is reasonable to all parties involved in a transaction, none of which are under a compulsion to buy or sell while having a reasonable knowledge of the relevant facts.
- (6) "Games of chance associated with casinos" includes casino night parties (also known as "Vegas Nights", "Las Vegas Nights", "Monte Carlo Nights")
- (7) "Notice", unless otherwise indicated, shall mean a written communication forwarded by U.S. mail, certified return receipt requested.

May, 2009 (Revised)

(Rule 1360-03-03-.01, continued)

- (8) "Operate" means
- (a) To run or control, directly or indirectly, the functioning of an annual gaming event;
 - (b) To bring about a desired or proper effect including, but not limited to, planning, promoting, advertising, marketing, authorizing or entering into agreements, purchasing supplies, telephone services, gaming records or devices, buying or leasing services, facilities or locations, printing of materials and tickets, shares, chances or similar records and the transporting of such records and other devices;
 - (c) To conduct the affairs of an event including, but not limited to, on-site or off-site management;
- (9) "Organizational document" shall mean the record that establishes the organization as a legal entity and shall include, but not be limited to, a certified copy of the Articles of Incorporation (or charter), constitution, or trust agreement.
- (10) "Physical Presence" means an organization has a tangible office established and located within the state of Tennessee where regular business within the organization's stated mission is transacted. The existence of a post office mailing address or drop box location is not sufficient to create a physical presence.
- (11) "Pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols which must be exposed by the player to determine wins or losses. Pull tabs may also be known as break-opens, hard cards, banded tickets, jar tickets, pickle cards, Lucky Seven Cards, Nevada Club tickets, instant bingo cards.
- (12) "Secretary" means the Secretary of State or the Secretary's authorized representative.

Authority: T.C.A. §§3-17-102(A), 3-17-102(8)(A), 3-17-103(a)(3)(B)(i), 3-17-103(a)(5)(A)(i)(a), 3-17-103(a)(5)(B)(i), 3-17-103(d)(1)(B), 3-17-104 (a)(12), 3-17-105(d)(2)(B), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.02 APPLICATION SLIDING FEE SCALE.

An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:

Event Gross Revenue	Filing Fee
\$0.00 to \$5,000.00	\$150.00
\$5001.00 to \$10,000.00	\$300.00
\$10,001.00 to \$20,000.00	\$450.00
over \$20,001.00	\$600.00

Authority: T.C.A. §3-17-115(a) and Chapter 207 § 14 of the Public Acts of 2005. **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.03 APPLICATIONS FOR AUTHORIZATION TO HOLD AN ANNUAL GAMING EVENT - TIME TO SUBMIT APPLICATIONS.

May, 2009 (Revised)

(Rule 1360-03-03-.03, continued)

- (1) Application Period. An application for authorization to hold an annual gaming event shall be submitted beginning July 1 and ending ~~December 31 of each year~~ January 31 preceding the annual event period.
- (2) Last Date to File. When the first or last day to file an application is a non-business day (e.g., weekend, holiday), the first or last day to file is the first business day immediately following the date established by statute. (Example: July 1, the first day to file an application, is a Sunday. The first filing day is the first business day following Sunday.)
- (3) Timely Filing. The postmark date on the annual event application shall determine whether an amendment is timely filed. An application submitted beyond the time set forth in the Act shall be automatically rejected.
- (4) Incomplete application. An application that does not comply with the provisions of the Act shall be rejected. The Secretary shall notify the applicant of the reasons for rejection of the application. Corrections to a deficient application shall be submitted no later than 12:00 noon, February 1 in the year subsequent to the filing of the application. If this date falls on a non-business day, the last day to file an amendment shall be 12:00 noon the last business day preceding the deadline date.

Authority: T.C.A. §§ 3-17-103 (a)(1)(e), 3-17-104(a), 3-17-105(a)(1), 3-17-105(d)(2)(B), 3-17-115(a), and ~~Chapter 207 §§ 3 and 9 of the Public Acts of 2005~~ Chapter 699 §§ 1 and 16 of the Public Acts of 2014.
Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment to rule filed January 14, 2009; effective May 29, 2009. Amendment to rule filed , 2014; effective 2014.

1360-03-03-.04 PROOF OF ACTIVE AND CONTINUOUS EXISTENCE.

- (1) Acceptable Proof. In addition to the requirements set out in Public Chapter 476, as amended, §3-17-101 et. seq., an organization may submit as proof of its continuous and active existence, including, but not limited to, the following types of information:
 - (a) A copy of the last five (5) annual Forms 990, 990-EZ, or 990-PF filed with the Internal Revenue Service for the five (5) year period immediately preceding the date of application;
 - (b) If the organization is a corporation, a copy of the last five (5) annual reports filed with the Secretary's Business Services Division for the five (5) year period immediately preceding the date of application;
 - (c) Copies of the organization's written authorization to conduct charitable solicitation for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application.
 - (d) Copies of published annual reports of the organization for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application;
 - (e) Copies of audited financial statements prepared by an independent certified public accountant and which covers the five (5) year period immediately preceding the date of application;
 - (f) Copies of minutes of annual meetings duly recorded and attested to by the secretary of the organization and which covers the five (5) year period immediately preceding the date of application;

May, 2009 (Revised)

(Rule 1360-03-03-.04, continued)

- (g) Copies of grant approval and continuation notices received by the organization and which covers the five (5) year period immediately preceding the date of application; and/or
 - (h) Copies of printed advertisements for the organization showing the date of publication of the advertisement and which covers the five (5) year period immediately preceding the date of application.
- (2) Multiple Forms of Proof. An organization may submit copies of documents from two or more types as indicated above, so long as documents cover the five (5) year period immediately preceding the date of application. (Example: Organized in 1995, organization was not required to file IRS Form 990 until Year 2001. An annual event application is filed July 1, 2004. It may submit Forms 990 for years 2001, 2002, 2003 and annual reports filed with Business Services Division for years 1999 and 2000.
- (3) Authentic Documents. Acceptable documents must be authentic, genuine or bona fide documents. Copies of documents must be conformed copies.

Authority: T.C.A. § 3-17-104(a)(6) and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.05 PROOF OF 501(C)(3) TAX EXEMPT STATUS AND PURPOSE(S).

- (1) Chapters or Affiliates. An organization which is a chapter or affiliate operating under a Section 501(c)(3) group exemption must have its own federal employer identification number and shall submit the following documents in support of its tax exempt status:
- (a) The Letter of Determination of the parent organization assigned by the Internal Revenue Service which includes the group's 4-digit tax exemption number;
 - (b) A list of all chapters and affiliates under the group exemption as submitted by the parent organization to the Internal Revenue Service, including the federal tax identification number and physical address of each chapter or affiliate;
 - (c) A written statement from the parent organization that the applicant is in good standing with the parent organization;
 - (d) A properly executed Affidavit of the organization's 501(c)(3) status [Secretary of State Form SS-6060]; and,
 - (e) A copy of the organizational document.
- (2) Recognition Prior to 1969. An organization recognized as exempt from federal income taxation by the Internal Revenue Service prior to October 9, 1969, that would otherwise qualify as a 501(c)(3) organization shall, in addition to the requirements of T.C.A. §3-17-103, submit the following documents in lieu of IRS form 1023 in support of its tax exempt status/purpose(s):
- (a) A detailed narrative of all of the activities of the organization. List each activity in order of importance based on the relative time and resources devoted to the activity. Indicate the percentage of time for each activity; and
 - (b) A Statement of Revenue and Expenses for the five (5) years immediately preceding the period under consideration.

May, 2009 (Revised)

Authority: T.C.A. § 3-17-102(1), 3-17-104(a)(6), and 3-17-115(a); and Internal Revenue Code § 501.
Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.06 ACTION-APPROVAL BY BOARD OF DIRECTORS.

- (1) ~~Executive Committee Vote. If the organization's by-laws do not authorize an executive committee to act, the minutes shall reflect approval in accordance with the charter or by-laws.~~
- (2) ~~Affidavit in Lieu of Minutes. In lieu of regular or special minutes of the board of directors, an organization shall submit an affidavit (Secretary of State Form SS-6062) indicating the date of the meeting, the total number of directors or trustees present, and the number casting an affirmative vote to operate a gaming event. The affidavit must bear the notarized signatures of all members of the governing body, whether or not a member attended the meeting or voted in the affirmative to operate an event. The board of directors of an organization must authorize an annual event application to be filed. If the organization's bylaws authorize an executive committee to act on behalf of the full board, approval by the executive committee shall suffice.~~

Authority: T.C.A. §§ 3-17-104(a)(10), 3-17-104(a)(12), 3-17-104(a)(12)(A) and (B), § 3-17-115(a), and Chapter 207 § 10 of the Public Acts of 2005 and Chapter 699 § 13 of the Public Acts of 2014.

Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009. Amendment to rule filed , 2014; effective , 2014.

1360-03-03-.07 APPLICATION CORRECTION AND AMENDMENT PROCESS.

- (1) Application Correction. The division will notify each organization of any deficiencies in the application. The organization must correct any deficiencies in or make any changes to the application by February 15. Pursuant to T.C.A. § 3-17-105(b)(2), the Secretary does not have authority to accept an annual event application change after February 1 of the annual event period.
- (2) Amendment Process. After February 1 of each year, the organization may amend its application in the following manner and circumstances.
 - (a) Date Changes. To change an annual event date, the organization must file an Amendment Form, SS-6065, with the Division requesting the new date of the annual event. Pursuant to T.C.A. § 3-17-103(d)(1)(A), the new date must be within twenty-eight (28) days of the original date listed on the application. The twenty-eight (28) day period may be counted prior to or after the event date listed in the approved application.
 - (b) Location Changes. If an organization's approved location listed in the event application becomes unavailable on the event date, the organization may change the location of the event by filing an Amendment Form, SS-6065, with the Division stating the reason for unavailability and the address of the new location.
 - (b)(c) Price Changes. To modify the actual dollar amount at which a ticket, share, chance or other similar record shall be sold, the organization must file an Amendment Form, SS-6065, with the Division stating the new dollar amount. If an organization was approved to sell tickets, shares, chances or other similar records at different value levels or tiers, the organization may amend the dollar amount at which each value level or tier is to be sold. Pursuant to T.C.A. § 3-17-103(d)(3), only one such modification shall be made prior to the sale of any ticket, share, chance or other similar record and only in an amount within fifty dollars (\$50.00) of the actual dollar amount or amounts listed in the approved application.
 - (c)(d) Notifying Law Enforcement. The organization must notify the Tennessee Bureau of Investigation, and the district attorney general for the judicial district in which

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(Rule 1360-03-03-.079, continued)

the event is conducted. The organization must also provide sufficient public notice in accordance with T.C.A. § 3-17-103(B)(ii).

Authority: T.C.A. § 3-17-103(a)(3)(B)(i) and (iii), 3-17-103(d)(1)(B), 3-17-105(b)(1) and (2), 3-17-105(d)(2)(B), 3-17-103(a)(3)(C)(i)-(iii), 3-17-103(d)(A) and (B)(i)-(ix), and 3-17-115(a); and Chapter 207 § 15 of the Public Acts of 2005. **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03.08 SALE OF TICKETS, SHARES, CHANCES OR OTHER SIMILAR RECORDS

- (1) Tickets, shares, chances or other similar records may be sold at a single price or at different value levels or tiers. All tickets, shares, chances or other similar records must contain the name of the organization on whose behalf the event is being conducted.
- (2) If tickets, shares, chances or other similar records are sold at different value levels or tiers, the organization must keep a record of each sale, which must include the name, the amount paid, the mailing address, and the contact information of the purchaser for the purpose of issuing refunds if a cancellation of the annual event occurs.
- (3) If a different value level or tiered pricing annual event is cancelled, any refund shall be for either the actual amount received by the organization from any individual, or if there is no record of each sale, the refund shall be equal to the highest value level or tiered price charged on a per ticket, share, chance or other similar record basis.

Authority: T.C.A. §§ 3-17-110(a) and 3-17-115(a); and Chapter 699 §§ 9 and 26 of the Public Acts of 2014. **Administrative History:** Original rule filed , 2014; effective , 2014.

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1360-03-03-.098 CONDUCT OF THE GAMES.

- (1) Advertising. Nothing in the act shall be construed as prohibiting an organization from accepting donations of advertising services. For purposes of the Act and these rules, however, granting permission to post flyers for an event on the premises of a vendor shall not be construed as donating advertising services.
- (2) Ticket Sales and Sale of Similar Records. Persons under the age of eighteen (18) are prohibited from selling or purchasing tickets and similar records for charitable gaming activities.
- (3) Officer(s) Responsible for Gross Receipts. The authorized organization shall duly designate an officer/officers of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all gaming event receipts. The name of each officer shall appear on the list required under T.C.A. § 3-17-104 (a) (20) and (21).
- (4) Payment of Workers Prohibited. No commission, salary, compensation, reward, recompense, reimbursement of expenses, or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any annual gaming event except as hereinafter provided for bookkeepers or accountants who assist by rendering their professional services. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of an annual gaming event either directly or indirectly.

Authority: T.C.A. §§ 3-17-103(a)(5)(A)(i)(a),(b), 3-17-103(a)(5)(B)(i), 3-17-104(a)(20)-(21), 3-17-115(a), and 39-17-602 through 39-17-603. **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.1009 CRIMINAL BACKGROUND CHECKS.

May, 2009 (Revised)

(Rule 1360-03-03-.1099, continued)

- (1) Effective Date. Beginning July 1, 2005, criminal background checks conducted by the TBI may be required by the Secretary.
- (2) Persons Subject to Criminal Background Checks. Fingerprint-based criminal background checks may be required of officers, directors, trustees, staff and any person operating an annual event on behalf of a 501(c)(3) organization. Persons who do not receive any compensation for their duties associated with the 501(c)(3) organization shall not be subject to criminal background checks.
- (3) Criteria for requiring Criminal Background Checks. Upon a determination by the Secretary that a criminal background check is required of a person in connection with an annual gaming event held by a 501 (c) (3) organization, the application of such organization shall not be considered until such background check has been completed and the results of the background check are received in the office of the Secretary of state. In the event that information is revealed in the background check which would be a violation of a provision of the Act, the Secretary shall give notice to the affected organization and allow them an opportunity to cure the disqualifying situation by disassociating such person or persons from taking any action on behalf of such organization. The organization shall submit to the Secretary, an affidavit, signed by the chief operating officer and the treasurer of the organization, setting forth what action has been undertaken by the organization to disassociate the individual/ individuals.
- (4) Procedure for Obtaining Criminal Background Checks. Upon notification by the Secretary that a criminal background check is required, the person notified shall take immediate steps to secure the background check. Persons who receive a request from the Secretary to submit to a criminal background check shall contact the then current state of Tennessee fingerprinting service to obtain information on the proper location and procedure for having the background check run. The current vendor for the state of Tennessee is Sylvan Identix Fingerprinting Centers. The toll free number is 1-866-226-2937. Persons must provide identifying information, the reason for being printed and name of the "Division of Charitable Solicitations, Charitable Gaming Section" as the entity for whom the prints are requested. Background checks will include data from a dual TBI & FBI search. At the time of the printing, the person must provide identification to verify his/her identity. A driver's license, passport, military ID or similar identification should be provided. The applicant shall be responsible for paying all costs associated with obtaining a criminal history background check.

The results of the background search will be provided directly to the Secretary of State's Division of Charitable Solicitations, Charitable Gaming Section. Results of background checks may be challenged by contacting the TBI. A form is available for download from the TBI web site at www.tbi.state.tn.us or by contacting the TBI directly.

- (5) Information from Law Enforcement Agency. The Secretary may require a criminal background check on any person based upon information received from a local, state or federal law enforcement agency indicating a violation of the law involving theft, misappropriation of funds, or any matter which would impact the legitimate operation of an annual gaming event. For purposes of this provision, law enforcement agency shall include the Internal Revenue Service.
- (6) Denial of Application to Conduct Annual Gaming Event. The Secretary may deny an application to operate an annual gaming event based upon the results of a criminal background check. In addition, the Secretary may impose a civil penalty if the background check shows a violation of the Charitable Gaming Implementation Law.

Penalties shall be determined based upon the rules for disqualification located below at section 1360-03-03-.14.

May, 2009 (Revised)

(Rule 1360-03-03-.1009, continued)

Authority: T.C.A. § 3-17-114(a)-(c), 3-17-114(e)(1)-(2), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.110 ACCOUNTING PROCEDURES.

(1) Records:

- (a) Record Keeping. Accurate records shall be kept by each authorized organization in a manner which shows in detail the amount and source of gross receipts, the expenses incurred and the name and address of each person receiving a prize over fifty (\$50.00) dollars and the value of the prize. Prize information shall be reported on the Acknowledgement of Prize Winner form (SOS Form SS 3037).
 - (b) Access to Records. The Secretary of State, the Attorney General and Reporter and the Tennessee Bureau of Investigation or their authorized agents or representatives shall at all times have access to all books and records of any authorized organization for the purpose of examining and checking them.
 - (c) Period of Retention of Records. All records, books of account, bank statements and all other papers related to the operation of an annual gaming event shall be retained and available for inspection by the Secretary of State and the Tennessee Bureau of Investigation or their authorized agents or representatives for a period of at least five (5) years after the date of the annual gaming event to which they relate.
 - (d) Payment of Allowable Expenses. Money for reasonable and necessary expenses may be paid from gross receipts only by checks having preprinted consecutive numbers drawn on the organization's account. Said checks must be made payable to the specific person providing the goods or rendering the service which gives rise to the expense item and at no time may checks be payable to "cash" or "bearer".
 - (e) Prizes, Donated Prizes, Goods, or Services. The organization shall disclose the fair market value of all prizes, goods and services as revenue (cash or in-kind) on the Financial Accounting form (SOS Form SS-6066).
- (2) Reporting. All organizations must file a financial report with the Division on forms approved by the Division. If the organization grosses more than fifty thousand dollars (\$50,000) in revenue, the organization must also complete an audit of the annual event in accordance with T.C.A. § 3-17-106(c).

Authority: T.C.A. § 3-17-103(a)(5)(B)(i), 3-17-106(a), 3-17-106(b)(1)-(4), 3-17-106(c)(1)-(4), 3-17-108(a)(1)-(2), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.124 PROOF THAT EVENT PROCEEDS WERE USED FOR A CHARITABLE PURPOSE.

Documentation to prove that event proceeds were used for a charitable purpose may include:

- (1) Cancelled checks which state the purpose of the payment and which are endorsed by and identify the payee shall be one form of acceptable documentation;
- (2) Signed and attested board minutes.
- (3) A copy of the organization's balance sheets and monthly statements should be provided to substantiate that funds have been earmarked.

May, 2009 (Revised)

(Rule 1360-03-03-.12, continued)

Authority: T.C.A. § 3-17-104(a)(19), 3-17-106(c)(2), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.132 DISQUALIFICATIONS/CIVIL PENALTIES.

- (1) Any violation of the Tennessee Charitable Gaming Implementation Law shall be a basis for disqualification or the imposition of civil penalties. Civil penalties may be assessed for the violation of either civil or criminal provisions of the Act.
- (2) Upon concluding that an organization violated any provision of T.C.A. § 3-17-101 et seq., pursuant to T.C.A. § 3-17-113(a), the Secretary of State shall notify the registrant of his intent to disqualify the organization or assess a civil penalty. The notification shall contain the reasons for the action and shall inform the organization of its right to request an administrative hearing within thirty (30) days of receipt of the notification. The disqualification or penalty shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the disqualification or penalty is upheld, the action shall become effective upon the service of the final administrative decision on the organization.
- (3) The hearing shall be held before an administrative law judge from the Administrative Procedures Division of the Tennessee Department of State and conducted pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. and Rule 1360-04-01-.14, Uniform Rules of Procedure for Contested Cases of State Agencies.
- (4) An organization that loses its tax exempt status shall be ineligible to hold an annual gaming event. The years for which the tax exempt status was not in effect shall not be countable as part of the period of active and continuous operation. If the Internal Revenue Service revokes an organization's tax exempt status and the revocation is made retroactive, the period of retroactivity will not be countable as part of the period of active and continuous operation.
- (5) A period of disqualification shall run from the date of application, the date of discovery of the violation or the date of imposition of the disqualification, whichever is later.

Authority: T.C.A. § 3-17-111(a)-(b), 3-17-111, 3-17-113(a), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.13 CO-OPERATION WITH OTHER STATE AGENCIES.

- (1) All information submitted to the Division of Charitable Solicitations, Charitable Gaming Section shall be available to federal, state or local agencies for the purpose of assisting in carrying out the provisions of T.C.A. 3-17-102 et. seq. and T.C.A. 39-16-702 and T.C.A. 39-16-703 and T.C.A. title 39, chapter 17 Parts 5 and 6, T.C.A. § 39-17-502(b), T.C.A. § 39-17-505, T.C.A. § 39-17-506(a), T.C.A. § 39-17-601, T.C.A. § 39-17-651 et. seq. and Title 3, Chapter 15, or any provision of federal law.
- (2) The Secretary shall assist and co-operate with the Tennessee Bureau of Investigation and/or the Internal Revenue Service in the conduct of any investigation.

Authority: T.C.A. § 3-17-113(a)-(b), 3-17-111 and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

May, 2009 (Revised)

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: July 31, 2014

Signature: Brent Culberson

Name of Officer: Brent Culberson
Title of Officer: Director, Division of Charitable Solicitations and Gaming



Subscribed and sworn to before me on: July 31, 2014

Notary Public Signature: Jennifer A. Cowherd

My commission expires on: 11-3-2015

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter
8-6-14
Date

Department of State Use Only

Filed with the Department of State on: 8/8/14

Effective for: 180 *days

Effective through: 2/4/15

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Student Assistance Corporation

DIVISION: Higher Education

SUBJECT: Tennessee Promise Scholarship Program

STATUTORY AUTHORITY: Chapter 900 of the Public Acts of 2014, Section 2;
and Tennessee Code Annotated Section 49-4-204

EFFECTIVE DATES: August 14, 2014 through February 10, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

The Emergency Rules implement the Tennessee Promise Scholarship Act of 2014. Beginning in the Fall term of 2015, all graduating high school seniors will be eligible to obtain a TCAT certificate, diploma, or associate's degree, free of tuition and fees by means of the Promise scholarship. The Promise scholarship program is a last-dollar scholarship that bridges the funding gap for a student after all other financial aid is applied.

Promise scholarship recipients will also benefit from individual guidance through a statewide network of volunteer mentors and engaging in the performance of at least eight hours of community service for each semester the scholarship is received.

In order to retain the Promise scholarship, a student will be required to maintain a 2.0 grade point average at the end of each academic year during which the student receives the scholarship.

The Emergency Rules specify the requirements for partnering organizations that will provide mentoring services to Promise scholarship recipients.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules for the Tennessee Promise Scholarship Program Chapter 1640-01-26, as proposed, shall have no projected impact on local governments.

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Sequence
 Number: 08-19-14
 Rule ID(s): 5789
 File Date (effective date): 8/14/14
 End Effective Date: 2/10/15

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Rule Type:

☒ Emergency Rule

Revision Type (check all that apply):

☐ Amendment

☒ New

☐ Repeal

Statement of Necessity:

Pursuant to T.C.A. 4-5-208(a)(5), TSAC seeks approval of emergency rules for the Tennessee Promise Scholarship program. Public Chapter 900 of 2014 enacts the Tennessee Promise Scholarship Act (the "Promise"), which implements the Act and revises certain provisions of the Tennessee Lottery Scholarship Program.

The Promise provides an opportunity for all graduating high school seniors, regardless of socioeconomic status or academic performance, to obtain a certificate, diploma, or associate's degree, free of tuition and fees, by providing students with a last-dollar scholarship, bridging the funding gap for a student after all other financial aid is applied; provides individual guidance to each participant through a statewide network of volunteer mentors; and engages the student by requiring the student to perform a minimum of eight hours of community service for each semester the scholarship is received.

Although the Promise scholarship will not be awarded until the fall term of 2015, these emergency rules provide guidance to the relationships between TSAC, postsecondary institutions, the participating mentoring/partnering organizations, and all Tennessee counties. These entities will begin coordinating efforts in the fall of 2014 to ensure that outreach to high school students, mentor recruitment, and the Promise application process are coordinated effectively.

Chapter Number	Chapter Title
1640-01-26	Tennessee Promise Scholarship Program
Rule Number	Rule Title
1640-01-26.01	Definitions

1640-01-26.02	Scholarship Award Amounts and Classifications
1640-01-26.03	Application Process
1640-01-26.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26.05	Eligibility – Early High School Graduation
1640-01-26.06	Personal or Medical Leave of Absence
1640-01-26.07	Community Service Program Requirements
1640-01-26.08	Selection of Partnering Organizations
1640-01-26.09	Participating Organization Requirements
1640-01-26.10	Participating Organizations – Service in Counties
1640-01-26.11	Terminating Events
1640-01-26.12	Tennessee Promise Scholarship Reforms
1640-01-26.13	Certification of Eligibility
1640-01-26.14	Evaluation of the Tennessee Promise Scholarship
1640-01-26.15	Award Made in Error
1640-01-26.16	Refund Policy
1640-01-26.17	Transfer Students
1640-01-26.18	Appeal and Exception Process

New Rules

Chapter 1640-01-26 Tennessee Promise Scholarship Program

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		1640-01-26-.18	Appeal and Exception Process

1640-01-26-.01 Definitions.

- (1) Academic Requirement: A requirement of a specified grade point average or satisfactory academic progress that determines the continuing eligibility for postsecondary financial assistance from the Tennessee Promise Scholarship.
- (2) Board of Directors: The board of directors of the Tennessee Student Assistance Corporation.
- (3) Board of Regents: The board of regents of the state university and community college system of Tennessee.
- (4) Certificate or Diploma: The term is defined in T.C.A. § 49-4-902.

- (5) Continuous Enrollment: The term is defined in T.C.A. 49-4-708.
- (6) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.
- (7) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.
- (8) Eligible High School: The term is defined in T.C.A. § 49-4-902.
- (9) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-708.
- (10) Entering Freshman: A student who enrolls in an eligible postsecondary institution as a participant in the Tennessee Promise Scholarship program in the fall term immediately following high school graduation, completion of a home school program, or attainment of a GED or HiSET diploma. Exceptions to this enrollment requirement may be made for students enrolled in a TCAT or for personal or medical leaves of absence as outlined in these rules.
- (11) FAFSA: The term is defined in T.C.A. § 49-4-902.
- (12) Full-Time Student: The term is defined in T.C.A. § 49-4-708.
- (13) GED: The term is defined in T.C.A. § 49-4-902.
- (14) Gift Aid: The term is defined in T.C.A. § 49-4-902.
- (15) HiSET: The High School Equivalency Test credential awarded by a state-approved institution or organization.
- (16) Home School Student: The term is defined in T.C.A. § 49-4-708.
- (17) Immediate Family Member: Spouse, parents, children, or siblings.
- (18) Mentor: An individual of at least 21 years of age who is assigned by a Partnering Organization to assist Tennessee Promise Scholarship program participants in the college application and financial aid process. Mentors may serve in a volunteer or employed capacity at the discretion of the Partnering Organization.
- (19) Parent: The parent or legal guardian of a student.
- (20) Partnering Organization: A not-for-profit organization selected by TSAC to administer the Tennessee Promise Scholarship program.
- (21) Resident: A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-.03.
- (22) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the TCAT at which the student is currently enrolled.
- (23) Semester: The term is defined in T.C.A. § 49-4-902.
- (24) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. "Semester hour" includes each semester hour attempted, whether remedial or for

credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED® or HiSET.

- (25) TCAT: Tennessee College of Applied Technology.
- (26) Tennessee Promise Scholarship: A last-dollar scholarship to be applied to a participating student's tuition and mandatory fees after all other gift aid for which a student is eligible is applied first to tuition and mandatory fees.
- (27) Tennessee Promise Scholarship Program ("Program"): A scholarship program which provides last-dollar financial aid, mentoring, and community service opportunities for Tennessee students upon graduation from high school or home school, or attainment of a GED or HiSET.
- (28) Terminating Event: The occurrence of an event described in T.C.A. § 49-4-708(c)(8).
- (29) Title IV: The term is defined in T.C.A. § 49-4-902.
- (30) TSAC: Tennessee Student Assistance Corporation.
- (31) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of a student at an eligible postsecondary institution that are charged to all students, and shall not include fees charged for the Regents Online Degree Program, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-902.

1640-01-26-.02 Scholarship Award Amounts and Classifications.

- (1) The Tennessee Promise Scholarship program is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing postsecondary education after all other gift aid has been credited to tuition and mandatory fees.
- (2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-708 and shall be set in the General Appropriations Act.
- (3) In the event that funds are insufficient to fully fund the Tennessee Promise Scholarship award program, TSAC may reduce the award amount in accordance with these rules.
- (4) Recipients of a Tennessee Promise Scholarship award as provided by these rules must be enrolled and attending full-time in an eligible postsecondary institution.
- (5) Except for approved medical or personal leaves of absence, award recipients must be continuously enrolled and maintain the required grade point average or satisfactory academic progress at an eligible postsecondary institution as provided in Tenn. Comp. R. & Regs. 1640-01-26-.04(1)(e).
- (6) All gift aid from sources other than the Tennessee Promise Scholarship shall be credited first to tuition and mandatory fees to reduce the student's Tennessee Promise Scholarship award. If all other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Tennessee Promise Scholarship award, but shall remain eligible for all other services available through the Tennessee Promise Scholarship program, provided the student maintains all academic and non-academic requirements.

- (7) The receipt of a Tennessee Promise Scholarship is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Tennessee Promise Scholarship does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.03 Application Process.

- (1) Students participating in the Tennessee Promise Scholarship program shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions.
- (2) Students enrolled in a community college, public four-year postsecondary institution, or private institution shall file the FAFSA or renewal FAFSA according to the following deadlines:
 - (a) No later than February 15 for fall enrollment, or
 - (b) No later than November 1 for spring and summer enrollment.
- (3) Students enrolled in a TCAT shall file the FAFSA or renewal FAFSA according to the following deadlines:
 - (a) No later than February 15 for summer and fall enrollment, or
 - (b) No later than November 1 for spring enrollment.
- (4) Students are required to complete the Tennessee Promise Scholarship award application for the initial year of enrollment no later than November 1 of their senior year of high school. For each successive year of participation students shall submit a renewal application no later than July 1 prior to the successive academic year giving notice to TSAC of their intent to participate in the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.04 Eligibility – Tennessee Promise Scholarship Program.

- (1) To be eligible to receive a Tennessee Promise Scholarship a student shall:
 - (a) Be a Tennessee resident;
 - (b) Graduate from an eligible high school, complete high school as a home school student, or obtain a GED or HiSET diploma, provided that the student obtains a GED or HiSET diploma prior to the student reaching nineteen (19) years of age;
 - (c) Attend full time in an eligible postsecondary institution in the fall term immediately following graduation from an eligible high school or home school, or attainment of the GED or HiSET diploma; except that a student enrolling in a certificate or diploma program at a TCAT may enroll in the summer prior to the fall term;
 - (d) Maintain continuous enrollment as a full-time student at an eligible postsecondary institution unless granted a medical or personal leave of absence;
 - (e) Maintain a minimum cumulative grade point average of 2.0, as determined by the eligible postsecondary institution, at the end of each academic year if enrolled in an

associate degree program, or maintain satisfactory academic progress as determined by the TCAT if enrolled in a certificate or diploma program;

- (f) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;
- (g) Be in compliance with federal drug-free rules and laws for receiving financial assistance;
- (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan;
- (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program;
- (j) Not be incarcerated;
- (k) Prior to initial fall enrollment in a postsecondary institution, attend one mandatory meeting related to financial aid and FAFSA completion, and the college application process; and a second mandatory meeting related to college orientation. Participants may, but are not required to, attend additional meetings as offered by a Partnering Organization; and
- (l) Complete a minimum of eight (8) hours of community service for each semester while participating in the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.05 Eligibility - Early High School Graduation.

- (1) A student who graduates early from an eligible high school, or completes an eligible home school program or obtains a GED or HiSET diploma prior to the spring semester preceding the initial fall enrollment may immediately enroll in an eligible postsecondary institution. Such student shall not be eligible for the Tennessee Promise Scholarship until the subsequent fall semester, but shall otherwise meet all initial eligibility requirements, and upon receipt of a Tennessee Promise Scholarship meet all continuing eligibility requirements as outlined in these rules.
- (2) Notwithstanding the provisions of this section, a student may be eligible for a Tennessee Promise Scholarship at a TCAT prior to the subsequent fall term if eligible for an exception as provided in these rules.
- (3) During all academic terms in which a student is enrolled in a postsecondary institution prior to the fall term following graduation from an eligible high school, the student shall:
 - (a) Enroll in an eligible postsecondary institution;
 - (b) Attend all mandatory meetings provided by the Partnering Organization;
 - (c) Not be required to participate in community service, except that the student must complete the amount of community service required by Tenn. Comp. R. & Regs. 1640-01-26-.07(1) before the subsequent fall semester; and
 - (d) Have no minimum requirement for credit hours or academic performance.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.06 Personal or Medical Leave of Absence.

- (1) A student may be granted a medical or personal leave of absence from timely enrollment in the initial semester, full-time attendance, or continuous enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of a religious commitment expected of members of that faith; fulfillment of required military service; the program of study at a TCAT only begins in the spring or summer academic term or openings are unavailable for the fall academic term; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.
- (2) A student granted a medical or personal leave of absence who resumes full-time attendance at an eligible postsecondary institution shall retain the Tennessee Promise Scholarship until a terminating event occurs. However, a leave of absence of six (6) months or less shall not count against the two and one-half years from the date of the student's initial enrollment at an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.07 Community Service Program Requirements.

- (1) A student participating in the Tennessee Promise Scholarship program shall perform a minimum of eight (8) hours of community service for each semester the scholarship is received. Service shall be performed prior to the beginning of each academic semester, including the initial fall semester, in which the Promise Scholarship is received.
- (2) The community service shall be approved in advance by the Partnering Organization. Upon completion of the community service, each student shall provide documentation to the Partnering Organization of the community service performed.
- (3) Community Service shall not include:
 - (a) Community service performed prior to the student graduating from high school, completing a home school program, or obtaining a GED or HiSET diploma;
 - (b) Work resulting in payment or remuneration of any kind;
 - (c) Work that results in academic credit by the postsecondary institution; or
 - (d) Work that directly benefits family members.
- (4) Community service may be performed with or under the direction of a faith-based organization, but shall not include religious persuasion or proselytizing.
- (5) Community service in excess of eight (8) hours performed in any semester shall not be carried over into subsequent semesters. Unless the student is on an approved leave of absence, failure to complete the eight (8) hours of community service prior to an academic semester will result in the immediate termination of eligibility for the Tennessee Promise Scholarship.
- (6) A student who knowingly provides false verification of community service shall be ineligible to receive additional benefits under the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.08 Selection of Partnering Organizations.

- (1) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall be recommended by the mayor or executive of each county in which the Partnering Organization participates and approved by the Board of Directors.
- (2) An approved Partnering Organization may continue to serve in such capacity unless it is no longer recommended by a county mayor or executive or approved by the Board of Directors. Final approval to serve as a Partnering Organization shall be given at the discretion of the Board of Directors and based on the Partnering Organization's satisfactory performance and compliance with these rules.
- (3) A negative recommendation by one county mayor or executive shall not automatically disqualify the Partnering Organization from participating in other counties but will be considered in the Board of Directors' evaluation of the Partnering Organization's continued participation in the Program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.09 Participating Organization Requirements.

- (1) Partnering Organizations that participate in the Tennessee Promise Scholarship program shall meet the following requirements:
 - (a) Each Partnering Organization shall be established as a not-for-profit organization, except that a postsecondary institution that receives funding under the Tennessee Promise Scholarship program shall not be permitted to participate as a partnering organization.
 - (b) Operate as a college access and success program serving Tennessee residents at an eligible postsecondary institution.
 - (c) Demonstrate annually to TSAC that funding exists within the Partnering Organization's budget to provide all services under the Tennessee Promise Scholarship program for a minimum of one (1) year. No funds under this program shall be provided for the direct or indirect benefit of a Partnering Organization.
 - (d) Adhere to rules promulgated by TSAC for the administration of this program.
 - (e) Provide a mentoring program with a ratio of one (1) volunteer mentor to no more than ten (10) eligible student applications. This ratio shall apply to eligible student applications and may be reduced in proportion to the number of students who drop from participation in the program.

The minimum ratio shall not apply to Partnering Organizations that employ full- or part-time paid mentors or counselors that work directly with students.
 - (f) Select volunteer mentors prior to December 1 for the following academic year and provide a minimum of one (1) training meeting for all paid and volunteer mentors prior to January 31. Mentors shall be required to attend one training meeting. This meeting shall cover at least the following topics:
 1. Program overview,

2. Appropriate mentor-student relationships,
 3. Financial aid,
 4. FAFSA completion,
 5. College applications and admissions, and
 6. Community service requirements.
- (g) Provide a minimum of one (1) meeting for all Tennessee Promise Scholarship program participants prior to March 1 preceding the initial enrollment in an eligible postsecondary institution. This meeting shall provide training, at a minimum, on the following topics:
1. An overview of the Tennessee Promise Scholarship program,
 2. Appropriate relationships with mentors,
 3. Financial aid opportunities,
 4. FAFSA completion, and
 5. The college application process.
- (h) Provide a minimum of one (1) meeting for all Tennessee Promise Scholarship program participants prior to May 31 preceding the initial enrollment in an eligible postsecondary institution. This meeting shall provide training, at a minimum, on topics related to college orientation and making the transition from high school to college.
- (i) Where a student cannot attend either mandatory meeting due to extenuating circumstances, Partnering Organizations shall provide opportunities for the student to receive the training prior to the March 1 and May 31 deadline, or as soon thereafter as practicable.
- (j) Provide a minimum of one (1) mentor contact monthly with each assigned Tennessee Promise Scholarship program participant beginning February 1 of the senior year of high school. Contact shall be maintained throughout the student's participation in the Program.
- (k) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall organize a local advisory council to serve as an advocate for the Program. The advisory council shall be comprised of a minimum of five (5) members, with at least one (1) member representative from each the local education agency, the county mayor's or executive's office, and a local postsecondary institution. Organizations that have been in existence for a minimum of three (3) years may use existing boards or boards of trustees as the local advisory council if the board or board of trustees is substantially similar to the requirements of this subsection.
- (l) Obtain a certified background check on all mentors prior to service as a mentor. A mentor shall not be eligible to participate in the Tennessee Promise Scholarship program if convicted of any felony or offense listed at T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, and 40-35-501(i)(2). For purposes of this section, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

- (m) Submit to audits on a periodic basis as determined by TSAC.
- (n) Enter into a memorandum of understanding with TSAC regarding program requirements and Partnering Organization obligations and provide requested information to TSAC as required in the memorandum of understanding.
- (o) Provide electronic notification to TSAC when Tennessee Promise participants have completed their mentoring, mandatory meetings, and community service requirements.
- (p) Provide performance metrics as outlined in the memorandum of understanding entered into with TSAC.
- (q) Obtain an insurance policy that, at a minimum, limits liability of the Partnering Organization against physical and sexual abuse or misconduct directed toward participants of the Program by its officers, directors, employees, and volunteers.

Authority: T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, 40-35-501, 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.10 Partnering Organizations – Service in Counties.

- (1) A Partnering Organization that agrees to provide Tennessee Promise Scholarship program services in a county shall make the program available to all eligible high school, home school, and GED/HiSET students in that county. The Partnering Organization shall continue to work with students from that county through a terminating event, regardless of which eligible postsecondary institution the student attends.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.11 Terminating Events

- (1) A student shall receive the Tennessee Promise Scholarship until reaching a terminating event.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.12 Tennessee Promise Scholarship Reforms.

- (1) In the event funds are insufficient to fully fund the cost of Tennessee Promise scholarships, TSAC is authorized to take one or more of the following actions:
 - (a) Establish a maximum award amount,
 - (b) Establish additional eligibility criteria for new applicants entering the program,
 - (c) Administer the program on a first-come, first-served basis.
- (2) Any action taken by TSAC as described in subsection (1) shall require approval by TSAC's board of directors and notification shall be provided to the chairs of the Senate and House Education Committees of the Tennessee General Assembly.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.13 Certification of Eligibility.

- (1) TSAC will create a master certification roster of students for each institution. The master list will contain students who have met all requirements for the Tennessee Promise Scholarship.
- (2) The eligible postsecondary institution will be responsible for certifying each student's eligibility for a financial award from the Tennessee Promise Scholarship. The award amount reported to TSAC shall be the amount of tuition and mandatory fees remaining after all other gift aid has first been applied to the student's tuition and mandatory fees.
- (3) Once the eligible postsecondary institution has certified the student's eligibility for a financial award, the certification information shall be electronically transmitted to TSAC.
- (4) TSAC shall process a payment request directly to the eligible postsecondary institution on behalf of all Tennessee Promise Scholarship recipients who are eligible for a financial award. No funds shall be disbursed directly to the Partnering Organizations or to the students.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.14 Evaluation of the Tennessee Promise Scholarship.

- (1) TSAC, along with the Tennessee Higher Education Commission, shall review the Tennessee Promise Scholarship program annually. The review shall include, at a minimum, the number of recipients, total cost of the program, student persistence, hours of community service completed, and scholarship retention. These findings shall be reported to the education committee members of the Senate and House of Representatives of the Tennessee General Assembly.
- (2) TSAC shall convene a meeting of its Special Advisory Committee at least annually to review the effectiveness and best practices of the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.15 Award Made in Error.

- (1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.
- (2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.
- (3) Repayment from the postsecondary institution will be required if TSAC determines that the error was due to the fault of the postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.16 Refund Policy.

- (1) If a recipient of a Tennessee Promise Scholarship award fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the refund, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.17 Transfer Students.

- (1) A student who meets all academic and non-academic requirements of the Tennessee Promise Scholarship may transfer from one eligible postsecondary institution to another eligible postsecondary institution and maintain the scholarship, provided the student is able to complete the diploma or associate degree in the amount of time remaining before reaching a terminating event as outlined in T.C.A § 49-4-708.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.18 Appeal and Exception Process.

- (1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Tennessee Promise Scholarship program. The IRP shall use the same procedures and timelines as those that currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.
- (2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP. The same guidelines shall exist for appeals of the Tennessee Promise Scholarship program as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg. 1640-01-19.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-924.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr.	X				
Comptroller Justin P. Wilson	X				
Commissioner Larry Martin	X				
Commissioner Kevin Huffman, by Ms. Emily Carter	X				
Chancellor John Morgan	X				
Dr. Joe Dipietro, by Dr. Katie High	X				
Dr. Betty Sue McGarvey				X	
Dr. J. Gary Adcox	X				
Mr. Jeff Gerkin	X				
Ms. Keri McInnis	X				
Dr. LaSimba Gray, Jr.				X	
Mr. Tom Hughes	X				
Ms. Sydney Jones				X	
Mr. Daniel Webb				X	

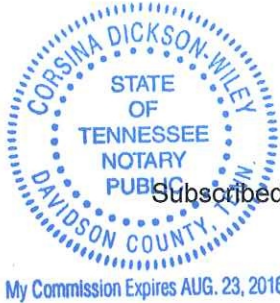
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 06/24/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

Date: 6.26.14

Signature: *Richard G. Rhoda*

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director,
Tennessee Student Assistance Corp.



Subscribed and sworn to before me on: 06-26-14

Notary Public Signature: *Corsina Dickson-Wiley*

My commission expires on: 08-23-14

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
8-13-14
Date

Department of State Use Only

Filed with the Department of State on: 8/14/14

Effective for: 180 *days

Effective through: 2/10/15

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Tennessee Board of Regents
<u>SUBJECT:</u>	Classifying Students In-State and Out-of-State
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Title 49, Chapter 7, Part 13 and Section 49-8-104
<u>EFFECTIVE DATES:</u>	November 11, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	<p>The Board estimates that implementation of the Rules will result in a net increase in state revenue as follows:</p> <p>Fiscal Year 2014-15 - \$149,200 Fiscal Year 2015-16 - \$158,200 Fiscal Year 2016-17 and subsequent fiscal years - \$167,700</p>
<u>STAFF RULE ABSTRACT:</u>	<p>The Rules make permanent the Emergency Rules concerning the same subject, which took effect on August 4, 2014, and are scheduled to expire on January 31, 2015.</p> <p>The Rules implement Chapter 745 of the Public Acts of 2014 by classifying a student as "in-state" for fee and tuition purposes at Board of Regents higher education institutions if the student is a U.S. citizen, has resided in Tennessee for at least one year immediately prior to admission and has either graduated from a public or private Tennessee secondary school or earned a Tennessee high school equivalency diploma.</p> <p>The Rules implement Chapter 612 of the Public Acts of 2014 (the "Tennessee VETS Act") by exempting veterans who meet certain initial and continuing eligibility requirements from being required to pay out-of-state tuition and fees at Board of Regents higher education institutions. In order to be exempt from out-of state tuition, the veteran must:</p>

1. Not have been dishonorably discharged;
2. Be eligible for Post-9-11 GI Bill benefits or Montgomery GI Bill benefits; and
3. Enroll in the institution, after satisfying admission requirements, within 24 months of discharge.

In order to continue to qualify for the exemption from out-of-state tuition, a veteran must maintain continuous enrollment in the higher education institution and evidence the intent to be a Tennessee resident.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

N/A

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact on local governments

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Email: register.information@tn.gov**For Department of State Use Only**Sequence Number: 08-02-14Rule ID(s): 5782File Date: 8/4/14Effective Date: 11/1/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Board of Regents
Division:	System-wide Student Rules
Contact Person:	Dr. Randall C. Schulte
Address:	1415 Murfreesboro Rd. Ste. 324 Nashville, Tennessee
Zip:	37217
Phone:	615-365-1505
Email:	Randy.Schulte@tbr.edu

Revision Type (check all that apply):☒ Amendment☐ New☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0240-02-02	Classifying Students In-State and Out-of-State
Rule Number	Rule Title
0240-02-02-.03	Rules for Determination of Status
0240-02-02-.04	Out-of State Students Who Are Not Required to Pay Out-of-State Tuition

Chapter 0240-02-02
Classifying Students In-State and out-of-State
Amendments

0240-2-2-.03 RULES FOR DETERMINATION OF STATUS.

- (3) The domicile of an unemancipated person is that of his or her parent, except as provided in paragraph (5) of this rule.
- (4) Unemancipated students of divorced parents shall be classified as "in-state" when one parent, regardless of custodial status, is domiciled in Tennessee, except as provided in paragraph (5) of this rule.
- (5) A student is classified "in-state" for fee and tuition purposes if the student is a citizen of the United States, has resided in Tennessee for at least one (1) year immediately prior to admission and has:
 - (a) Graduated from a Tennessee public secondary school;
 - (b) Graduated from a private secondary school that is located in this state; or
 - (c) Earned a Tennessee high school equivalency diploma.
- (6) The spouse of a student classified as "in-state" shall also be classified as "in-state", subject to the requirements of T.C.A. Title 4, Chapter 58.

Authority: T.C.A. §49-8-104 and 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 7, 1995; effective December 29, 1995. Amendment filed August 11, 2004; effective December 29, 2004.

0240-2-2-.04 OUT-OF-STATE STUDENTS WHO ARE NOT REQUIRED TO PAY OUT-OF- STATE TUITION.

- (6) Any dependant dependent child who qualifies and is selected to receive a scholarship under the Dependant Dependent Children Scholarship Act (T.C.A. §49-4-704) because his or her parent is a law enforcement officer, fireman, or emergency medical service technician who was killed or totally and permanently disabled while performing duties within the scope of employment, shall not be charged out-of-state tuition.
- (13) A veteran enrolled in any Tennessee Board of Regents (TBR) institution of higher education in this state shall not be required to pay out-of-state tuition or any out-of-state fee, if the veteran:
 - (a) Has not been dishonorably discharged from a branch of the United States armed forces or the National Guard;
 - (b) Is eligible for Post-9/11 GI Bill benefits or Montgomery GI Bill benefits; and
 - (c) Enrolls in the TBR institution, after satisfying all admission requirements, within twenty-four (24) months after the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document.
- (14) To continue to qualify for in-state tuition and fees, a veteran shall:
 - (a) Maintain continuous enrollment as defined by the TBR institution at which the veteran is enrolled; and
 - (b) Within one (1) year of enrolling in the TBR institution;

1. Register to vote in this state; or
2. Demonstrate by objective evidence intent to be a resident of this state by obtaining at least two (2) of the following:
 - (i) A Tennessee driver license;
 - (ii) A Tennessee motor vehicle registration;
 - (iii) Proof of established employment in the state; or
 - (iv) Other documentation clearly evidencing domicile or residence in the state, as determined by the Tennessee Higher Education Commission.

Authority: T.C.A. §§49-8-104 and 49-8-203. Public Chapter No. 612, Tennessee Veterans Education Transition Support Act. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed July 29, 1986; effective October 29, 1986. Amendment filed July 29, 1988; effective October 29, 1988. Amendment filed February 8, 1989; effective May 29, 1989. Amendment filed August 7, 1995; effective December 29, 1995. Amendment filed August 11, 2004; effective December 29, 2004.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Gregory Duckett	X				
John M. Farris	X				
Darrell Freeman	X				
Tom Griscom				X	
Commissioner Kevin S. Huffman	X				
Commissioner Julius Johnson	X				
Jonas Kisber	X				
Fran Marcum				X	
Rebecca Reeves	X				
Emily Reynolds	X				
Howard Roddy	X				
Parker Smith				X	
Johnny Stites	X				
Robert P. Thomas	X				
Danni Varlan	X				
Dotty Webb	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents in Special Session on 07/15/2014, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 7-16-2014

Signature: _____

Name of Officer: Mary G. Moody

Title of Officer: General Counsel and Board Secretary



Subscribed and sworn to before me on: 7-16-14

Notary Public Signature: _____

My commission expires on: 2-6-2017

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

7-30-14

Date

Department of State Use Only

Filed with the Department of State on: 8/4/14

Effective on: 11/1/14

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

PROGRAM: Home Inspector Licensing Program

SUBJECT: Home Inspectors; Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-6-303(a)(5).

EFFECTIVE DATES: November 4, 2014 through June 30, 2015, for purposes of publication in the administrative register maintained by the Secretary of State and for the components of the rulemaking that do not create or increase a fee. The components of the rulemaking that create or increase fees may be subject to Tennessee Code Annotated, Section 4-5-229, which would make the fee increase effective July 1, 2015 through June 30, 2016.

FISCAL IMPACT: Minimal according to the Department.

STAFF RULE ABSTRACT: The Rules define "inactive licensee", require that applicants for licensure must pass the National Home Inspector Examination, limit the number of times that a particular course may be repeated for continuing education credit, establish fees for inactive status, establish application fees for approval of continuing education courses, add subjects that are acceptable for continuing education, authorize licensees to move active licenses to inactive status, require licensees to provide notice of a change in their general liability or errors and omissions insurance, require record retention, and requires licensees to provide notice of an address change.

Public Hearing Comments:

Rule 0780-05-12-.04: Temporary Practice Permit. The proposed rule would permit an active member of the armed forces of the United State who is the subject of a military transfer a temporary practice permit for up to six months to complete education/examination requirements where reciprocity does not exist with the prior state.

Mr. Paul Edmonson, a member of the public asked whether the temporary practice permit would fall under reciprocity or if it would be separate whether it would be a good idea to require that the temporary practice permit holder have a license in good standing in order to receive the temporary practice permit. Counsel advised that the new rule provides more than reciprocity because it allows home inspectors who are not licensed to practice in a reciprocal jurisdiction to practice for six months in Tennessee so that they may obtain any educational or examination deficiencies.

Rule 0780-05-12-.07 Qualifying and Continuing Education is amended to include certain specific courses.

Mr. Michael Amick, a member of the public asked whether there was a provision for a home inspector to gain a termite inspection certification. Ray Bair, of the Home Inspector Advisory Board responded that a pest inspection certification would have to be totally separate from the home inspector license.

Mr. Michael Ray of Home Check Inspections of Johnson City, TN stated by letter that the approved training is too restrictive and that training involving energy audits have made him a better inspector but this training has been rejected in the past. The Director, Nikole Avers responded that energy audit course work has never been submitted for approval but should an application be received it will be considered. Further a home inspector can apply for individual course approval as well.

Rule 0780-05-12-.07 Qualifying and Continuing Education is amended to include provision to allow the Commissioner to withdraw approval for courses and provide for course renewal. .

Mr. Ray Baird, member of the Home Inspector Advisory Board asked how the rules regarding renewal of courses will apply to existing courses – will they simply fall off or will there be a thirty (30) day grace period. The Home Inspector Program's Executive Director, Nikole Avers responded that the program will check with the providers to see which courses are currently being offered and that at the courses would be assigned an expiration date at the time of application and that the provider would have an opportunity to resubmit the course for approvals.

Rule 0780-05-12-.12 Inactive Status allows a licensee to move a license from active to inactive status.

Mr. Michael Amick, a member of the public indicated concern regarding rule language that indicated that there was no continuing education requirement while in inactive status. Mr. Amich stated that he and some members of the local chapter of InterNACHI inspectors were opposed. Mr. Hardee, a member of the public indicated that he would like to see a time limit on the period of inactivity. Mr. Edmonson also indicated that he would like to see a limit on the time of inactivity and also that the continuing education requirements be met prior to moving to an active license.

Counsel read T.C.A. 62-6-307, which provides that an inactive license can be reactivated upon application and satisfactory evidence that the applicant has completed thirty two (32) hours of continuing education in the proceeding twenty four (24) months.

Rule 0780-05-1-.13 requires licensees to maintain and provide satisfactory proof of insurance and any changes to the insurance policy within thirty (30) days.

Mr. Paul Edmonson, a member of the public stated that there was no clear rule requiring the licensee to list the State as the insurance carrier and that the requirement to name the State on the proof of insurance can sometimes cost a little more.

Counsel indicated that there may be general rule making authority which would allow a requirement that the licensee list the State of TN as the certificate holder on the proof of insurance. The rule was amended to include the requirement that the State of Tennessee be named as the certificate holder by the insurance carrier.

Rule 0780-05-12-.14 Records Retention requires a home inspector to retain records related to a home inspection for three (3) years from when the report as provided to the client.

Mr. Ray Baird stated that he would like to see a clarification regarding whether the retention clock starts on the date the client receives the report or the date the report was prepared. Mr. Edmonson suggested that the clock should start on the home inspection date.

Mr. Michael Ray of Home Check Inspections of Johnson City, TN stated by letter that the three (3) year records retention requirement implies that the licensees liability is also limited to three (3) years and that the rule should state such explicitly. As a result of the unlimited period of time where a licensee can be liable many retired home inspectors continue to purchase insurance for protection.

Counsel responded that the statute of limitations for home inspectors cannot be addressed at the rulemaking hearing.

The rule was amended to reflect that the records retention clock starts on the date of the home inspection.

Rule 0780-05-12-.15 requires home inspector licensees to provide the program with any updated addresses within thirty (30) days of any change.

Mr. Amick, a member of the public stated that a requirement to add an email address should be added to the rule. The Administrative Director responded that the rule is not intended to require everyone to submit an email address although they are welcome to do so. The Director states that a rule requiring an email address is excessive and failing to provide an email address should not be grounds for discipline.

Regulatory Flexibility Addendum

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

These amendments and new rules would impact all small business performing home inspector services in the state. There are approximately four hundred twenty-five (425) licensees in the state of Tennessee.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

There are no foreseen increased costs as a result of these amendments.

3. A statement of the probable effect on impacted small businesses and consumers;

There's no expected adverse impact on small businesses as a result of these amendments and new rules. There's no expected adverse impact on consumers as a result of these amendments and new rules.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

There are no known alternative methods to achieve the goals exhibited by these rules.

5. A comparison of the proposed rule with any federal or state counterparts;

There are no federal counterparts to these rules.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule;

There will be no exemptions created by these rules.

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For Department of State Use Only

Sequence Number: 08-08-14
Rule ID(s): 5784
File Date: 8/6/14
Effective Date: 11/4/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Home Inspector Licensing Program
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Revision Type (check all that apply):

☒ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0780-05-12	Home Inspectors
Rule Number	Rule Title
0780-05-12-.02	Definitions
0780-05-12-.04	Application Requirements
0780-05-12-.05	Renewal Requirements
0780-05-12-.06	Fees
0780-05-12-.07	Qualifying and Continuing Education
0780-05-12-.12	Inactive Status
0780-05-12-.13	Insurance
0780-05-12-.14	Records Retention
0780-05-12-.15	Change of Address

Chapter 0780-05-12
Home Inspectors

Amendments

Rule 0780-05-12-.02 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

In addition to the definitions contained in T.C.A. § 62-6-302, the following definitions are applicable to this chapter:

- (1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;
- (2) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied as a prerequisite for renewal of a license as a home inspector;
- (3) "Home" or "Residence" means any structure consisting of one to four (1-4) dwelling units, intended to be or used principally for residential purposes;

- ~~(4) "Instructor" means an individual who presents course materials approved for qualifying education and continuing education credit hours that has the necessary experience, training or education in the course subject matter and has been approved by the commissioner;~~
- ~~(4) "Inactive Licensee" means an individual who is not engaged in the business of conducting home inspections and holds a valid, current inactive license issued by the commissioner;~~
- (5) "Instructor" means an individual who presents course materials approved for qualifying education and continuing education credit hours that has the necessary experience, training or education in the course subject matter and has been approved by the commissioner;
- (6) "Licensee" means an individual who holds a current, unexpired license as a home inspector issued by the commissioner;
- (7) "Provider" means an individual or entity offering courses approved by the commissioner for qualifying education or continuing education credit hours;
- (8) "Qualifying Education" means education that is creditable toward the education requirements required for initial licensure as a home inspector.

0780-5-12-.04 APPLICATION REQUIREMENTS is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

- (1) ~~Beginning July 1, 2006, a~~ Any person who desires to obtain a license as a home inspector shall submit an application to the commissioner, along with the required application fee.
- (2) ~~On or after July 1, 2006 but before December 28, 2006, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:~~
- ~~(a) Is at least eighteen (18) years of age;~~
 - ~~(b) Has graduated from high school or earned a general education development ("GED") certificate;~~
 - ~~(c) Has not been convicted of a felony or any other crime that has a direct bearing on the applicant's ability to perform competently and fully as a licensee;~~
 - ~~(d) Has been principally engaged in the performance of home inspections in Tennessee for at least two (2) years preceding that date of the application;~~
 - ~~(e) Has completed at least one hundred fifty (150) home inspections for compensation;~~
 - ~~(f) Has passed an examination approved by the commissioner;~~
 - ~~(g) Has a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00); and~~
 - ~~(h) Has a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. and these rules.~~
- (2) An applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:
- (a) Is at least eighteen (18) years of age;
 - (b) Has graduated from high school or earned a general education development ("GED") certificate;
 - (c) Has not been convicted of a crime that has a direct bearing on the applicant's ability to perform competently and fully as a licensee;
 - (d) Is not the subject of a disciplinary or enforcement action by another state or a local jurisdiction in connection with the performance of home inspections or the licensing or certification of home inspectors;
 - (e) Has successfully completed ninety (90) hours of education approved by the commissioner in the performance of home inspections and the preparation of home inspection reports;

- (f) Has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors (EBPHI);
 - (g) Has a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00); and
 - (h) Has a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. and these rules.
- (3) ~~Reciprocity. The commissioner may grant a license as a home inspector to a nonresident of this state an individual who holds a like, unexpired license in good standing as a home inspector in the individual's resident that state if the requirements for licensure are at least equivalent to the requirements for licensure in Tennessee. Such applicant shall file with the commissioner the required application form and fee, along with proof that the applicant holds a current, valid license as a home inspector in another state.~~
- (3) Reciprocity. The commissioner may grant a home inspector license to a nonresident of this state who holds a like, unexpired license in good standing as a home inspector in the individual's resident state if the requirements for licensure are at least equivalent to the requirements for licensure in Tennessee. Applicants for a reciprocal license shall file with the commissioner the required application form and fee, along with proof that the applicant holds a current, valid license as a home inspector in another state.
- (4) Temporary Practice Permit: An applicant for licensure as a home inspector, who holds an active home inspector license in another state whose licensure requirements are not considered substantially equivalent for reciprocity as specified in 0780-5-12-.0413 and whose spouse is an active member of the armed forces of the United States, who is the subject of a military transfer to Tennessee may be granted a temporary practice permit for up to six (6) months to complete specific education and/or examination requirements.
- (a) In addition to the requirements of 0780-5-12-.04 (1) & (2) Temporary Practice Permit applicants must provide:
 - (i) Evidence that applicant's spouse is a member of the armed forces and is subject to a military transfer to Tennessee;
 - (b) The temporary practice permit will expire six (6) months from the date of issuance or upon issuance of a license as a home inspector in Tennessee which ever may occur first.
 - (c) No renewal of the temporary practice permit will be granted.
 - (d) If a temporary practice permit holder's out-of-state license is revoked, suspended, denied renewal or restricted, then the Commissioner may revoke, suspend, or restrict a permit holder's temporary practice permit.

Authority: T.C.A. §§ 62-6-303(a)(5) and 62-6-305 [effective July 1, 2006]; PUBLIC CHAPTER NO. 230 and Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

0780-5-12-.05 RENEWAL REQUIREMENTS is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

- (1) A license issued to a home inspector pursuant to this chapter shall expire two (2) years from the date of its issuance and shall become invalid on such date unless renewed.
- (2) A home inspector may renew a current, valid license by submitting an application form approved by the commissioner, the required renewal fee, proof of having completed thirty-two (32) hours of commissioner-approved continuing education and any other information required for renewal, to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (3) ~~A licensee seeking to renew a license within the thirty (30) days immediately prior to the expiration date of the license may renew the license by submitting any required documentation, the fee for renewal, and a late penalty of \$25.00.~~

- (3) If a course has been taken more than once during the same renewal period the hourly educational credit will be counted once for purposes of satisfying the educational requirements for renewal.
- (4) Credit shall not be granted for a repeated course within a three (3) year time period unless the course has undergone a significant update.
- (5) A licensee who fails to pay the renewal fee, ~~the applicable late penalty,~~ or otherwise fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have sixty (60) days after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of \$25.00, submittal of proof of compliance with any other prerequisites to renewal, and payment of an additional late penalty of \$25.00 for each month or fraction of a month that renewal is late.
- (6) Any person seeking renewal of a license more than sixty (60) days after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure and submit proof of having completed thirty-two (32) hours of commissioner-approved continuing education within the previous two (2) years. In considering such reapplication, the commissioner has the discretion to:
 - (a) ~~waive reexamination or additional education requirements beyond the examination and education presented at the time of initial licensure; or~~
 - (a) waive reexamination if the exam presented at the time of initial licensure was completed within the previous five (5) years; or
 - (b) reinstate a license subject to the applicant's compliance with such reasonable conditions as the commissioner may prescribe, including payment of a penalty fee, in addition to the penalty fee provided in paragraph (5), of not more than twenty-five dollars (\$25.00) per month or portion thereof from the date the license expired.
- (7) A fee submitted by mail to the commissioner for purposes of renewal will be deemed to have been submitted on the date of the official postmark ~~on such mail.~~

Authority: T.C.A. §§ 62-6-303(a)(5) and 62-6-307[effective July 1, 2006]; and Chapter 65 of the Public Acts of 2005, §§ 4, 8, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

Rule 0780-05-12-.06 Fees is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

- (1) ~~Non-refundable application fee and initial license fee.....\$300.00~~
- (2) ~~The examination fee will be set by the entity designated by the State to administer the examination.~~
- (3) ~~Renewal fee.....\$200.00~~
- (4) ~~The late renewal penalty fee is \$25.00 per month for each month or fraction of a month that renewal is late.~~
- (1) Non-refundable application fee is one hundred dollars (\$100.00).
- (2) Initial license fee is two hundred dollars (\$200.00).
- (3) The examination fee shall be set by the Board pursuant to its contract with the entity it designated to administer the examination.
- (4) Renewal fee is two hundred dollars (\$200.00) for an active license.
- (5) The late penalty fee is twenty-five dollars (\$25.00) per month for each month or fraction of a month that renewal is late.
- (6) Application fee to place the license in inactive status is fifty dollars (\$50.00).
- (7) Renewal fee for license while in inactive status is fifty dollars (\$50.00).

- (8) Application fee for qualifying or continuing education course approval is fifty dollars (\$50.00).
- (9) Renewal fee for qualifying or continuing education course approval is fifty dollars (\$50.00).
- (10) Application for individual course approval is twenty-five dollars (\$25.00) for each course that is not on the pre-approved course list.

Authority: T.C.A. §§ 62-06-303 and 62-06-307 [effective July 1, 2006]; PUBLIC CHAPTER NO. 230 and Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

0780-5-12-.07 QUALIFYING AND CONTINUING EDUCATION is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

(1) Course approval requirements.

- (a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit to the commissioner any documents, statements and forms as the commissioner may require. The complete application shall be submitted to the commissioner no later than thirty (30) days prior to the scheduled date of the course. At a minimum, a person or entity seeking approval to conduct a course for qualifying or continuing education shall provide:

1. Name and address of the provider;
2. Contact person and his or her address, telephone number, fax number and email address;
3. Name of course as it will appear on course certificates;
4. The location of the courses or programs;
5. The number and type (qualifying or continuing) of education credit hours requested for each course;
6. ~~Topic outlines, which list~~ A timed outline listing the summarized topics covered in each course and upon request a copy of any course materials;
7. If a prior approved course has substantially changed, a ~~summarization~~ summary of the changes; and
8. The names and qualifications of each instructor who is qualified in accordance with paragraph (2) of this rule.

(b) Acceptable topics include, but are not limited to:

1. Observing and identifying defects in structural components, foundations, roof coverings;
2. Insulation and ventilation;
3. Exterior and interior components;
4. Plumbing, heating, cooling and electrical systems;
5. Applicable state laws and rules;
6. ~~Business management.~~
6. Home Inspection business management;
7. Home Inspector Ethics;
8. Tennessee Standards of Home Inspector Practice; and

9. Home Inspection Report Writing.

~~(c) In addition to accepting courses approved as described in this rule, qualify and continuing education credits may be granted to an applicant or licensee if the applicant or licensee provides documentation acceptable to the commissioner that shows that the courses meet applicable requirements for the category of credit applied for, including proof that the applicant or licensee attended and successfully completed the course.~~

~~(c) "Course hour" is defined as fifty (50) minutes of teaching out of each sixty (60) minute segment.~~

~~(d) In addition to accepting courses approved as described in this rule, qualifying and continuing education credits may be granted on an individual basis to an applicant or licensee if the applicant or licensee provides documentation acceptable to the commissioner that shows that the courses meet applicable requirements for the category of credit applied for, including proof that the applicant or licensee attended and successfully completed the course. To be considered for credit, the prescribed form must be received along with a fee of twenty-five dollars (\$25.00) per course.~~

~~(e) The commissioner may withhold or withdraw approval of any provider for violation of or failure to comply with any provision of this rule. Such withholding or withdrawal does not constitute a contested case proceeding pursuant to the Uniform Administrative Procedures Act compiled at T.C.A. Title 4, Chapter 5.~~

~~(f) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the commissioner. Such person or entity may indicate that the commissioner has approved a course of study if that course of study has been pre-approved by the commissioner before it is advertised or held.~~

~~(g) Within five (5) working days after the completion of each course, the provider shall submit to the commissioner a list of all attendees, including, if applicable, the attendees' license numbers, who completed the course on the course completion form approved by the commissioner. If the course is for continuing education, each licensee successfully completing the course shall be furnished a certificate certifying completion.~~

~~(h) Providers shall maintain course records for at least five (5) years. The commissioner may at any time examine such records to ensure compliance with this rule.~~

~~(i) Approval of any course(s) may be withdrawn by the commissioner if:~~

~~(i) The conduct of a provider, an instructor, or any other school representative in either the establishment or conduct of a course violates, or fails to meet the requirements of, the provisions of this chapter or other applicable law;~~

~~(ii) The course content is based on excluded conduct of a home inspector as identified in 0780-5-12-10.~~

~~(j) The required fee from a course provider for approval of courses for qualifying or continuing education shall be fifty dollars (\$50.00) for each course. The application fee is non-refundable.~~

~~(k) If granted, course approval shall be valid for a period of two (2) years from the date of approval.~~

~~(l) The provider of an approved course who wishes to renew such approval shall submit an application, on a form approved by the Commission, along with a renewal fee of fifty dollars (\$50.00) for each course, within thirty (30) days prior to the approval's expiration.~~

~~(m) If a provider fails to renew course approval within thirty (30) days of the approval's expiration date, the provider may, upon payment of a twenty-five dollar (\$25.00) penalty, apply for a late renewal. No late renewals or course approval will be granted if over three (3) months have passed since expiration.~~

~~(n) State universities, colleges and junior colleges that provide courses for qualifying or continuing education shall be exempt from the fee.~~

- (2) Instructor qualifications and requirements. A person seeking approval as an instructor shall submit an application on a form approved by the commissioner. If granted, the approval as an instructor shall be valid for a period of two (2) years from the date of the approval.
- (a) An instructor shall have one of the following qualifications:
1. Three (3) years of recent experience in the subject matter being taught; or
 2. A minimum of an associate's degree in the subject area being taught; or
 3. Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught.
 4. Other educational, teaching or professional qualifications determined by the commissioner which constitute an equivalent to one (1) or more of the qualifications in parts (2)(a)1., 2., and 3. of this rule.
- (b) In order to maintain approved status, an instructor shall furnish evidence on a form approved by the commissioner that the instructor has taught a commissioner-approved course, or any other course for qualifying or continuing education credit that the commissioner determines to be equivalent, within the preceding two (2) year period. Any instructor who does not meet their requirements of this subparagraph (2)(b) shall be required to submit a new application in accordance with subparagraph (2)(a) above.
- (3) In order to renew a license, and in addition to any other renewal requirements, the licensee shall submit to the commissioner a log, on a form provided by the commissioner, showing the type(s) of continuing education activity claimed, provider, location, duration, instructor's or speaker's name, description of the activity and continuing education units earned, along with the completion certificate(s) furnished by the provider. A licensee shall submit the log and the completion certificate(s) to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (4) If a licensee who is not a resident of Tennessee satisfies a continuing education requirement for renewal of a license as a home inspector in the licensee's resident state, the licensee will be deemed to have met the continuing education requirement for Tennessee; provided, the continuing education requirements in the licensee's resident state are at least equivalent to the continuing education requirements in Tennessee. In order for the licensee to be deemed to have met the requirement, the licensee must file with the license renewal a certificate from the licensee's resident state certifying that the licensee has completed the continuing education requirement for licensure in that state. The certificate from the licensee's resident state verifying compliance with continuing education in the resident state must be received by the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.

Authority: T.C.A. §§ 62-6-303(a)(4), (5) and 62-6-307 [effective July 1, 2006], and Chapter 65 of the Public Acts of 2005, §§ 4, 8, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

Chapter 0780-05-12
Home Inspectors

New Rules

Rule 0780-05-12-.12 Inactive Status
Rule 0780-05-12-.13 Insurance
Rule 0780-05-12-.14 Records Retention
Rule 0780-05-12-.15 Change of Address

Rule 0780-05-12-.12 Inactive Status

- (1) A licensee may request inactive license status by making application to the Commissioner and paying the applicable fifty dollar (\$50.00) fee. A licensee whose license is in inactive status may not directly or indirectly engage in conduct or advertise or claim to be engaging in or conducting the business or acting in the capacity of a home inspector as defined in T.C.A. § 62-6-302. No continuing education shall be required for renewal of an inactive license. Licensees holding an inactive license are not required to maintain general liability or errors and omissions insurance.
- (2) To reactivate an inactive license, licensee shall submit an application for reinstatement on a form as prescribed by the commissioner, accompanied by:
 - (a) A reactivation fee of two hundred dollars (\$200.00); and
 - (b) A certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00) and errors and omissions insurance to cover all home inspection activities contemplated in T.C.A. § 62-6-301 et seq. and the rules promulgated thereunder; and
 - (c) A sworn statement that the licensee has not violated any provisions of the Tennessee Home Inspector Licensing Act of 2005, (T.C.A. 62-6-301 et seq.) or the rules promulgated thereunder while the applicant's license was in inactive status; and
 - (d) If more than two (2) years have passed since the license was placed in an inactive status, the applicant shall, in addition to the requirements set forth in T.C.A. 62-6-307(f)(2)(A), also furnish evidence satisfactory to the commissioner that the applicant has completed thirty-two (32) hours of commissioner-approved continuing education during the twenty-four (24) months immediately preceding the date of application for reinstatement.
- (3) The licensing period for an inactive license shall be identical to the licensing period for the originally issued active license. Inactive licenses shall be renewed biennially.

Authority: T.C.A. § 62-06-307 [effective July 1, 2006]; PUBLIC CHAPTER NO. 230 and Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

Rule 0780-05-12- 13 Insurance

- (1) All licensees, except those in inactive status, are required to maintain and provide satisfactory proof of a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00) and a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. The State of Tennessee shall be named as the certificate holder on the insurance documentation provided by the insurance carrier.
- (2) Licensees shall notify the Board within thirty (30) days of any change to the insurance policy, including but not limited to the expiration or termination of a policy, changes in insurance carrier, term of policy, or coverage dates.

Authority: T.C.A. §§ 62-06-303 and 62-06-308 [effective July 1, 2006]; PUBLIC CHAPTER NO. 230 and Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

Rule 0780-05-12- 14 Records Retention

All licensed home inspectors shall retain original and true copies or electronic copies of all written contracts and agreements for home inspector services and all home inspection reports for a period of at least three (3) years commencing on the home inspection date.

Authority: T.C.A. § 62- 6-303 [effective July 1, 2006]; PUBLIC CHAPTER NO. 230 and Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

Rule 0780-05-12- 15 Change of Address

All licensed home inspectors shall provide the commissioner with any address change in writing within thirty (30) days of any change.

Authority: T.C.A. § 62-06-306 [effective July 1, 2006]; PUBLIC CHAPTER NO. 230 and Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11, and 12. Administrative History: Public necessity rule filed April 7, 2006; effective through September 19, 2006. Original rule filed July 3, 2006; effective September 16, 2006.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance (board/commission/ other authority) on February 13, 2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: January 10, 2012

Rulemaking Hearing(s) Conducted on: (add more dates). March 8, 2012



My Commission Expires

Date: 7-2-14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 7-2-14

Notary Public Signature: Denise M Lewis

My commission expires on: 2-15-2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RECOGNIZED

Robert E. Cooper, Jr.
Attorney General and Reporter

7-30-14

Date

Department of State Use Only

Filed with the Department of State on: 8/6/14

Effective on: 11/4/14

Tre Hargett

Tre Hargett
Secretary of State

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SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Tennessee Student Assistance Corporation
<u>DIVISION:</u>	Higher Education
<u>SUBJECT:</u>	Tennessee Promise Scholarship Program
<u>STATUTORY AUTHORITY:</u>	Chapter 900 of the Public Acts of 2014, Section 2; and Tennessee Code Annotated Section 49-4-204
<u>EFFECTIVE DATES:</u>	November 12, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The Rules make permanent the Emergency Rules concerning the same subject, which took effect on August 14, 2014, and are scheduled to expire on February 10, 2015.</p> <p>The Rules implement the Tennessee Promise Scholarship Act of 2014. Beginning in the Fall term of 2015, all graduating high school seniors will be eligible to obtain a TCAT certificate, diploma, or associate's degree, free of tuition and fees by means of the Promise scholarship. The Promise scholarship program is a last-dollar scholarship that bridges the funding gap for a student after all other financial aid is applied.</p> <p>Promise scholarship recipients will also benefit from individual guidance through a statewide network of volunteer mentors and engaging in the performance of at least eight hours of community service for each semester the scholarship is received.</p> <p>In order to retain the Promise scholarship, a student will be required to maintain a 2.0 grade point average at the end of each academic year during which the student receives the scholarship.</p> <p>The Rules specify the requirements for partnering organizations that will provide mentoring services to Promise scholarship recipients.</p>

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses. The statute requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule

Pursuant to T.C.A. § 4-5-202, the Tennessee Student Assistance Corporation (TSAC) intends to file proposed rules, Chapter 1640-01-26, Tennessee Promise Scholarship Program, as new rules, in lieu of a rulemaking hearing. It is the intent of TSAC to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of issue of the Tennessee Administrative Register in which the proposed rules are published.

The Tennessee Promise Scholarship Program provides an opportunity for all graduating high school seniors, regardless of socioeconomic status or academic performance, to obtain a TCAT certificate, diploma, or associate's degree, free of tuition and fees, by providing students with a last-dollar scholarship, bridging the funding gap for a student after all other financial aid is applied; provides individual guidance to each participant through a statewide network of volunteer mentors; and engages the student by requiring the student to perform a minimum of eight hours of community service for each semester the scholarship is received.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules were drafted to facilitate administration of the program for eligible postsecondary education institutions.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

TSAC worked diligently with the postsecondary financial aid community, the Tennessee Higher Education Commission, Tennessee Board of Regents, and Tennessee Colleges of Applied Technology, University of Tennessee System, and partnering organizations that are most directly affected by these proposed rules to ensure that proposed compliance and reporting requirements can be practically applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

TSAC expects the eligible institutions engaged in the administration of the Tennessee Promise Scholarship Program to comply with all applicable rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact on small businesses.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

Not applicable. The proposed rules were drafted to facilitate administration of the program for the eligible postsecondary institutions and should have no impact postsecondary institutions employing fifty (50) or fewer full-time employees.

4. Less burdensome, intrusive, or costly alternative methods:

As these proposed rules present no foreseeable cost to the eligible postsecondary institutions, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules for the Tennessee Promise Scholarship Program Chapter 1640-01-26, as proposed, shall have no projected impact on local governments.

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 08-18-14

Rule ID(s): 5788

File Date: 8/14/14

Effective Date: 11/12/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):

☐ Amendment

☒ New

☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1640-01-26	Tennessee Promise Scholarship Program
Rule Number	Rule Title
1640-01-26.01	Definitions
1640-01-26.02	Scholarship Award Amounts and Classifications
1640-01-26.03	Application Process
1640-01-26.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26.05	Eligibility – Early High School Graduation
1640-01-26.06	Personal or Medical Leave of Absence
1640-01-26.07	Community Service Program Requirements
1640-01-26.08	Selection of Partnering Organizations
1640-01-26.09	Participating Organization Requirements
1640-01-26.10	Participating Organizations – Service in Counties
1640-01-26.11	Terminating Events
1640-01-26.12	Tennessee Promise Scholarship Reforms
1640-01-26.13	Certification of Eligibility
1640-01-26.14	Evaluation of the Tennessee Promise Scholarship
1640-01-26.15	Award Made in Error
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New Rules

Chapter 1640-01-26 Tennessee Promise Scholarship Program

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1640-01-26-.01 Definitions.

- (1) Academic Requirement: A requirement of a specified grade point average or satisfactory academic progress that determines the continuing eligibility for postsecondary financial assistance from the Tennessee Promise Scholarship.
- (2) Board of Directors: The board of directors of the Tennessee Student Assistance Corporation.
- (3) Board of Regents: The board of regents of the state university and community college system of Tennessee.
- (4) Certificate or Diploma: The term is defined in T.C.A. § 49-4-902.
- (5) Continuous Enrollment: The term is defined in T.C.A. 49-4-708.
- (6) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.
- (7) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.
- (8) Eligible High School: The term is defined in T.C.A. § 49-4-902.
- (9) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-708.
- (10) Entering Freshman: A student who enrolls in an eligible postsecondary institution as a participant in the Tennessee Promise Scholarship program in the fall term immediately following high school graduation, completion of a home school program, or attainment of a

GED or HiSET diploma. Exceptions to this enrollment requirement may be made for students enrolled in a TCAT or for personal or medical leaves of absence as outlined in these rules.

- (11) FAFSA: The term is defined in T.C.A. § 49-4-902.
- (12) Full-Time Student: The term is defined in T.C.A. § 49-4-708.
- (13) GED: The term is defined in T.C.A. § 49-4-902.
- (14) Gift Aid: The term is defined in T.C.A. § 49-4-902.
- (15) HiSET: The High School Equivalency Test credential awarded by a state-approved institution or organization.
- (16) Home School Student: The term is defined in T.C.A. § 49-4-708.
- (17) Immediate Family Member: Spouse, parents, children, or siblings.
- (18) Mentor: An individual of at least 21 years of age who is assigned by a Partnering Organization to assist Tennessee Promise Scholarship program participants in the college application and financial aid process. Mentors may serve in a volunteer or employed capacity at the discretion of the Partnering Organization.
- (19) Parent: The parent or legal guardian of a student.
- (20) Partnering Organization: A not-for-profit organization selected by TSAC to administer the Tennessee Promise Scholarship program.
- (21) Resident: A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-.03.
- (22) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the TCAT at which the student is currently enrolled.
- (23) Semester: The term is defined in T.C.A. § 49-4-902.
- (24) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. "Semester hour" includes each semester hour attempted, whether remedial or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED® or HiSET.
- (25) TCAT: Tennessee College of Applied Technology.
- (26) Tennessee Promise Scholarship: A last-dollar scholarship to be applied to a participating student's tuition and mandatory fees after all other gift aid for which a student is eligible is applied first to tuition and mandatory fees.
- (27) Tennessee Promise Scholarship Program ("Program"): A scholarship program which provides last-dollar financial aid, mentoring, and community service opportunities for Tennessee students upon graduation from high school or home school, or attainment of a GED or HiSET.
- (28) Terminating Event: The occurrence of an event described in T.C.A. § 49-4-708(c)(8).

- (29) Title IV: The term is defined in T.C.A. § 49-4-902.
- (30) TSAC: Tennessee Student Assistance Corporation.
- (31) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of a student at an eligible postsecondary institution that are charged to all students, and shall not include fees charged for the Regents Online Degree Program, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-902.

1640-01-26-.02 Scholarship Award Amounts and Classifications.

- (1) The Tennessee Promise Scholarship program is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing postsecondary education after all other gift aid has been credited to tuition and mandatory fees.
- (2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-708 and shall be set in the General Appropriations Act.
- (3) In the event that funds are insufficient to fully fund the Tennessee Promise Scholarship award program, TSAC may reduce the award amount in accordance with these rules.
- (4) Recipients of a Tennessee Promise Scholarship award as provided by these rules must be enrolled and attending full-time in an eligible postsecondary institution.
- (5) Except for approved medical or personal leaves of absence, award recipients must be continuously enrolled and maintain the required grade point average or satisfactory academic progress at an eligible postsecondary institution as provided in Tenn. Comp. R. & Regs. 1640-01-26-.04(1)(e).
- (6) All gift aid from sources other than the Tennessee Promise Scholarship shall be credited first to tuition and mandatory fees to reduce the student's Tennessee Promise Scholarship award. If all other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Tennessee Promise Scholarship award, but shall remain eligible for all other services available through the Tennessee Promise Scholarship program, provided the student maintains all academic and non-academic requirements.
- (7) The receipt of a Tennessee Promise Scholarship is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Tennessee Promise Scholarship does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.03 Application Process.

- (1) Students participating in the Tennessee Promise Scholarship program shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions.
- (2) Students enrolled in a community college, public four-year postsecondary institution, or private institution shall file the FAFSA or renewal FAFSA according to the following deadlines:
 - (a) No later than February 15 for fall enrollment, or

- (b) No later than November 1 for spring and summer enrollment.
- (3) Students enrolled in a TCAT shall file the FAFSA or renewal FAFSA according to the following deadlines:
 - (a) No later than February 15 for summer and fall enrollment, or
 - (b) No later than November 1 for spring enrollment.
- (4) Students are required to complete the Tennessee Promise Scholarship award application for the initial year of enrollment no later than November 1 of their senior year of high school. For each successive year of participation students shall submit a renewal application no later than July 1 prior to the successive academic year giving notice to TSAC of their intent to participate in the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.04 Eligibility – Tennessee Promise Scholarship Program.

- (1) To be eligible to receive a Tennessee Promise Scholarship a student shall:
 - (a) Be a Tennessee resident;
 - (b) Graduate from an eligible high school, complete high school as a home school student, or obtain a GED or HiSET diploma, provided that the student obtains a GED or HiSET diploma prior to the student reaching nineteen (19) years of age;
 - (c) Attend full time in an eligible postsecondary institution in the fall term immediately following graduation from an eligible high school or home school, or attainment of the GED or HiSET diploma; except that a student enrolling in a certificate or diploma program at a TCAT may enroll in the summer prior to the fall term;
 - (d) Maintain continuous enrollment as a full-time student at an eligible postsecondary institution unless granted a medical or personal leave of absence;
 - (e) Maintain a minimum cumulative grade point average of 2.0, as determined by the eligible postsecondary institution, at the end of each academic year if enrolled in an associate degree program, or maintain satisfactory academic progress as determined by the TCAT if enrolled in a certificate or diploma program;
 - (f) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;
 - (g) Be in compliance with federal drug-free rules and laws for receiving financial assistance;
 - (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan;
 - (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program;
 - (j) Not be incarcerated;
 - (k) Prior to initial fall enrollment in a postsecondary institution, attend one mandatory meeting related to financial aid and FAFSA completion, and the college application

process; and a second mandatory meeting related to college orientation. Participants may, but are not required to, attend additional meetings as offered by a Partnering Organization; and

- (l) Complete a minimum of eight (8) hours of community service for each semester while participating in the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.05 Eligibility - Early High School Graduation.

- (1) A student who graduates early from an eligible high school, or completes an eligible home school program or obtains a GED or HiSET diploma prior to the spring semester preceding the initial fall enrollment may immediately enroll in an eligible postsecondary institution. Such student shall not be eligible for the Tennessee Promise Scholarship until the subsequent fall semester, but shall otherwise meet all initial eligibility requirements, and upon receipt of a Tennessee Promise Scholarship meet all continuing eligibility requirements as outlined in these rules.
- (2) Notwithstanding the provisions of this section, a student may be eligible for a Tennessee Promise Scholarship at a TCAT prior to the subsequent fall term if eligible for an exception as provided in these rules.
- (3) During all academic terms in which a student is enrolled in a postsecondary institution prior to the fall term following graduation from an eligible high school, the student shall:
 - (a) Enroll in an eligible postsecondary institution;
 - (b) Attend all mandatory meetings provided by the Partnering Organization;
 - (c) Not be required to participate in community service, except that the student must complete the amount of community service required by Tenn. Comp. R. & Regs. 1640-01-26-.07(1) before the subsequent fall semester; and
 - (d) Have no minimum requirement for credit hours or academic performance.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.06 Personal or Medical Leave of Absence.

- (1) A student may be granted a medical or personal leave of absence from timely enrollment in the initial semester, full-time attendance, or continuous enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of a religious commitment expected of members of that faith; fulfillment of required military service; the program of study at a TCAT only begins in the spring or summer academic term or openings are unavailable for the fall academic term; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.
- (2) A student granted a medical or personal leave of absence who resumes full-time attendance at an eligible postsecondary institution shall retain the Tennessee Promise Scholarship until a

terminating event occurs. However, a leave of absence of six (6) months or less shall not count against the two and one-half years from the date of the student's initial enrollment at an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.07 Community Service Program Requirements.

- (1) A student participating in the Tennessee Promise Scholarship program shall perform a minimum of eight (8) hours of community service for each semester the scholarship is received. Service shall be performed prior to the beginning of each academic semester, including the initial fall semester, in which the Promise Scholarship is received.
- (2) The community service shall be approved in advance by the Partnering Organization. Upon completion of the community service, each student shall provide documentation to the Partnering Organization of the community service performed.
- (3) Community Service shall not include:
 - (a) Community service performed prior to the student graduating from high school, completing a home school program, or obtaining a GED or HiSET diploma;
 - (b) Work resulting in payment or remuneration of any kind;
 - (c) Work that results in academic credit by the postsecondary institution; or
 - (d) Work that directly benefits family members.
- (4) Community service may be performed with or under the direction of a faith-based organization, but shall not include religious persuasion or proselytizing.
- (5) Community service in excess of eight (8) hours performed in any semester shall not be carried over into subsequent semesters. Unless the student is on an approved leave of absence, failure to complete the eight (8) hours of community service prior to an academic semester will result in the immediate termination of eligibility for the Tennessee Promise Scholarship.
- (6) A student who knowingly provides false verification of community service shall be ineligible to receive additional benefits under the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.08 Selection of Partnering Organizations.

- (1) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall be recommended by the mayor or executive of each county in which the Partnering Organization participates and approved by the Board of Directors.
- (2) An approved Partnering Organization may continue to serve in such capacity unless it is no longer recommended by a county mayor or executive or approved by the Board of Directors. Final approval to serve as a Partnering Organization shall be given at the discretion of the Board of Directors and based on the Partnering Organization's satisfactory performance and compliance with these rules.

- (3) A negative recommendation by one county mayor or executive shall not automatically disqualify the Partnering Organization from participating in other counties but will be considered in the Board of Directors' evaluation of the Partnering Organization's continued participation in the Program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.09 Participating Organization Requirements.

- (1) Partnering Organizations that participate in the Tennessee Promise Scholarship program shall meet the following requirements:

- (a) Each Partnering Organization shall be established as a not-for-profit organization, except that a postsecondary institution that receives funding under the Tennessee Promise Scholarship program shall not be permitted to participate as a partnering organization.
- (b) Operate as a college access and success program serving Tennessee residents at an eligible postsecondary institution.
- (c) Demonstrate annually to TSAC that funding exists within the Partnering Organization's budget to provide all services under the Tennessee Promise Scholarship program for a minimum of one (1) year. No funds under this program shall be provided for the direct or indirect benefit of a Partnering Organization.
- (d) Adhere to rules promulgated by TSAC for the administration of this program.
- (e) Provide a mentoring program with a ratio of one (1) volunteer mentor to no more than ten (10) eligible student applications. This ratio shall apply to eligible student applications and may be reduced in proportion to the number of students who drop from participation in the program.

The minimum ratio shall not apply to Partnering Organizations that employ full- or part-time paid mentors or counselors that work directly with students.

- (f) Select volunteer mentors prior to December 1 for the following academic year and provide a minimum of one (1) training meeting for all paid and volunteer mentors prior to January 31. Mentors shall be required to attend one training meeting. This meeting shall cover at least the following topics:
 - 1. Program overview,
 - 2. Appropriate mentor-student relationships,
 - 3. Financial aid,
 - 4. FAFSA completion,
 - 5. College applications and admissions, and
 - 6. Community service requirements.
- (g) Provide a minimum of one (1) meeting for all Tennessee Promise Scholarship program participants prior to March 1 preceding the initial enrollment in an eligible postsecondary institution. This meeting shall provide training, at a minimum, on the following topics:

1. An overview of the Tennessee Promise Scholarship program,
 2. Appropriate relationships with mentors,
 3. Financial aid opportunities,
 4. FAFSA completion, and
 5. The college application process.
- (h) Provide a minimum of one (1) meeting for all Tennessee Promise Scholarship program participants prior to May 31 preceding the initial enrollment in an eligible postsecondary institution. This meeting shall provide training, at a minimum, on topics related to college orientation and making the transition from high school to college.
- (i) Where a student cannot attend either mandatory meeting due to extenuating circumstances, Partnering Organizations shall provide opportunities for the student to receive the training prior to the March 1 and May 31 deadline, or as soon thereafter as practicable.
- (j) Provide a minimum of one (1) mentor contact monthly with each assigned Tennessee Promise Scholarship program participant beginning February 1 of the senior year of high school. Contact shall be maintained throughout the student's participation in the Program.
- (k) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall organize a local advisory council to serve as an advocate for the Program. The advisory council shall be comprised of a minimum of five (5) members, with at least one (1) member representative from each the local education agency, the county mayor's or executive's office, and a local postsecondary institution. Organizations that have been in existence for a minimum of three (3) years may use existing boards or boards of trustees as the local advisory council if the board or board of trustees is substantially similar to the requirements of this subsection.
- (l) Obtain a certified background check on all mentors prior to service as a mentor. A mentor shall not be eligible to participate in the Tennessee Promise Scholarship program if convicted of any felony or offense listed at T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, and 40-35-501(i)(2). For purposes of this section, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.
- (m) Submit to audits on a periodic basis as determined by TSAC.
- (n) Enter into a memorandum of understanding with TSAC regarding program requirements and Partnering Organization obligations and provide requested information to TSAC as required in the memorandum of understanding.
- (o) Provide electronic notification to TSAC when Tennessee Promise participants have completed their mentoring, mandatory meetings, and community service requirements.
- (p) Provide performance metrics as outlined in the memorandum of understanding entered into with TSAC.

- (q) Obtain an insurance policy that, at a minimum, limits liability of the Partnering Organization against physical and sexual abuse or misconduct directed toward participants of the Program by its officers, directors, employees, and volunteers.

Authority: T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, 40-35-501, 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.10 Partnering Organizations – Service in Counties.

- (1) A Partnering Organization that agrees to provide Tennessee Promise Scholarship program services in a county shall make the program available to all eligible high school, home school, and GED/HiSET students in that county. The Partnering Organization shall continue to work with students from that county through a terminating event, regardless of which eligible postsecondary institution the student attends.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.11 Terminating Events

- (1) A student shall receive the Tennessee Promise Scholarship until reaching a terminating event.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.12 Tennessee Promise Scholarship Reforms.

- (1) In the event funds are insufficient to fully fund the cost of Tennessee Promise scholarships, TSAC is authorized to take one or more of the following actions:
 - (a) Establish a maximum award amount,
 - (b) Establish additional eligibility criteria for new applicants entering the program,
 - (c) Administer the program on a first-come, first-served basis.
- (2) Any action taken by TSAC as described in subsection (1) shall require approval by TSAC's board of directors and notification shall be provided to the chairs of the Senate and House Education Committees of the Tennessee General Assembly.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.13 Certification of Eligibility.

- (1) TSAC will create a master certification roster of students for each institution. The master list will contain students who have met all requirements for the Tennessee Promise Scholarship.
- (2) The eligible postsecondary institution will be responsible for certifying each student's eligibility for a financial award from the Tennessee Promise Scholarship. The award amount reported to TSAC shall be the amount of tuition and mandatory fees remaining after all other gift aid has first been applied to the student's tuition and mandatory fees.
- (3) Once the eligible postsecondary institution has certified the student's eligibility for a financial award, the certification information shall be electronically transmitted to TSAC.

- (4) TSAC shall process a payment request directly to the eligible postsecondary institution on behalf of all Tennessee Promise Scholarship recipients who are eligible for a financial award. No funds shall be disbursed directly to the Partnering Organizations or to the students.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.14 Evaluation of the Tennessee Promise Scholarship.

- (1) TSAC, along with the Tennessee Higher Education Commission, shall review the Tennessee Promise Scholarship program annually. The review shall include, at a minimum, the number of recipients, total cost of the program, student persistence, hours of community service completed, and scholarship retention. These findings shall be reported to the education committee members of the Senate and House of Representatives of the Tennessee General Assembly.
- (2) TSAC shall convene a meeting of its Special Advisory Committee at least annually to review the effectiveness and best practices of the Tennessee Promise Scholarship program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.15 Award Made in Error.

- (1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.
- (2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.
- (3) Repayment from the postsecondary institution will be required if TSAC determines that the error was due to the fault of the postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.16 Refund Policy.

- (1) If a recipient of a Tennessee Promise Scholarship award fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the refund, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.17 Transfer Students.

- (1) A student who meets all academic and non-academic requirements of the Tennessee Promise Scholarship may transfer from one eligible postsecondary institution to another eligible postsecondary institution and maintain the scholarship, provided the student is able to complete the diploma or associate degree in the amount of time remaining before reaching a terminating event as outlined in T.C.A § 49-4-708.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.

1640-01-26-.18 Appeal and Exception Process.

- (1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Tennessee Promise Scholarship program. The IRP shall use the same procedures and timelines as those that currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.
- (2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP. The same guidelines shall exist for appeals of the Tennessee Promise Scholarship program as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg. 1640-01-19.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-924.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent
Governor Haslam, by Mr. Mark Cate	X			
Dr. Richard Rhoda	X			
Dr. Claude Pressnell	X			
Mr. David H. Lillard, Jr.	X			
Comptroller Justin P. Wilson	X			
Commissioner Larry Martin	X			
Commissioner Kevin Huffman, by Ms. Emily Carter	X			
Chancellor John Morgan	X			
Dr. Joe Dipietro, by Dr. Katie High	X			
Dr. Betty Sue McGarvey				X
Dr. J. Gary Adcox	X			
Mr. Jeff Gerkin	X			
Ms. Keri McInnis	X			
Dr. LaSimba Gray, Jr.				X
Mr. tom Hughes	X			
Ms. Sydney Jones				X
Mr. Daniel Webb				X

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 06/24/2014, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 6-26-14

Signature: *Richard G. Rhoda*

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director, Tennessee Student Assistance Corp.



Subscribed and sworn to before me on: 06-26-2014

Notary Public Signature: *Corsina Dickson-Wiley*

My commission expires on: 08-23-2016

My Commission Expires AUG. 23, 2016

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

8-13-14

Date

Department of State Use Only

Filed with the Department of State on: 8/14/14

Effective on: 11/12/14

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>BOARD:</u>	Tennessee Board of Optometry
<u>SUBJECT:</u>	Prohibition Upon the Practice of Optometry In or In Conjunction With Any Retail Store or Other Commercial Establishment Where Merchandise Is Displayed or Offered for Sale
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Sections 63-8-112, 63-8-113 and 63-8-125
<u>EFFECTIVE DATES:</u>	November 16, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	The Board estimates that the Rule will not affect state or local government revenues. The Board estimates that the cost of enforcing the Rule will not exceed \$10,000 per year.
<u>STAFF RULE ABSTRACT:</u>	Beginning July 2, 2015, the Rule requires a licensed optometrist's office to have a permanent, structural separation between the optometrist's office and any retail store or commercial establishment. The optometrist's office must also have an entrance for a patient that opens directly onto a public street, lobby or corridor.

Public Hearing Comments

The Board received the following written and oral comments concerning the proposed rule:

1. Comment: The Tennessee Association of Optometric Physicians continues to receive reports of optometrists being controlled by or treated as if they were employees of retail-establishments. The proposed rule is necessary to protect the independence and personal professional judgment of optometrists leasing space from retail establishments.
2. Comment: The proposed rule should be rejected or revised for the following reasons: 1) 2003 Public Chapter 246 (currently codified at Tenn. Code Ann. § 63-8-125) terminated any authority on the part of the board to mandate complete separation between an optometrist's office and a lessor's retail establishment by codifying a list of requirements for lease agreements between optometrists and retailers that did not include a complete-separation provision; 2) no meaningful relationship exists between the proposed complete-separation requirement and the independence of an optometrist's professional judgment; 3) mechanisms available under the current regulatory regime, as well as less onerous alternative new regulations, including rules or practices related to disclaimers and notices, would suffice to implement Section 63-8-113(c)(6); and 4) the complete-separation requirement deviated from the Board's own prior practice in enforcing Section 63-8-113(c)(6) against Jeffery Rothman in 1997 and would be, consequently, beyond the Board's statutory rule-making authority.
3. Comment: Optometrists who lease space from retail establishments have experienced frequent efforts to interfere with their professional judgment and onerous scheduling and business-practice requirements placed upon them by retail lessors. One retail lessor had required an optometrist lessee to participate in "transitioning" patients from the exam space to the retail space in an express effort to circumvent the existing two-door policy. The permanent separation required by the proposed rule is less onerous than the enforcement of patient-privacy rules against retail establishments that were not positioned to comply with them.
4. Comment: A complete separation between an optometrist's office and a retailer of ophthalmic materials interferes with an optometrist's ability to ensure that the retailer's dispensing opticians provide patients with the lenses and care they require.
5. Comment: The requirement of a permanent separation would require expensive, extensive and at times impractical renovations to the office space an optometrist lease from a retail establishment.
6. Comment: The proposed rule will inconvenience optometric patients who wish to purchase ophthalmic materials at an adjacent retailer because a permanent structural separation of the optometrist's office from the retail store will, in some cases, require that they walk outside and be exposed to the elements.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

**Board of Optometry
Rule 1045-02-.17
Statement of Economic Impact**

Types of small businesses that will be directly affected by the proposed rules:

The proposed rule will directly affect licensed optometrists, who – properly considered – are healthcare providers, not small businesses.

Types of small businesses that will bear the cost of the proposed rules:

Licensed optometrists will bear the costs of the proposed rule..

Types of small businesses that will directly benefit from the proposed rules:

Licensed optometrists will benefit from the proposed rule.

Description of how small business will be adversely impacted by the proposed rules:

There is no foreseeable adverse impact from this rule.

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Board of Optometry does not believe there are less burdensome alternatives to the proposed rule.

Comparison of the proposed rule with federal or state counterparts:

Federal: The Board of Optometry is not aware of any federal counterparts.

State: The proposed rule does not conflict with any state counterpart.

Effect of possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

If an exemption were provided to the licensed optometrist affected by the proposed rule, such optometrists and their patients would be deprived of all the benefits resulting from the rule.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule will not have an impact on local governments.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 08-22-14
 Rule ID(s): 5790
 File Date: 8/18/14
 Effective Date: 11/16/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Health/Board of Optometry
Division:	Health Related Boards
Contact Person:	John Scott Gentry, O.D.
Address:	665 Mainstream Drive, Poplar Room, Nashville, TN
Zip:	37243
Phone:	(615) 532-5100
Email:	drsgod@aol.com

Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1045-02	General Rules Governing the Practice of Optometry
Rule Number	Rule Title
1045-02-.17	Prohibition Upon the Practice of Optometry In Or In Conjunction With Any Retail Store or Other Commercial Establishment Where Merchandise Is Displayed Or Offered for Sale

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 1045-02-.17 Prohibition Upon the Practice of Optometry In Or In Conjunction With Any Retail Store or Other Commercial Establishment Where Merchandise Is Displayed Or Offered for Sale is created pursuant to the following language:

- (1) Pursuant to T.C.A. §§ 63-8-113(c)(6) and 63-8-125, a licensed optometrist shall practice in a location that is independently operated and is physically separate from a retailer of ophthalmic materials or other commercial establishment pursuant to the following requirements:
 - (a) After July 1, 2015, there shall be a permanent structural separation between a licensed optometrist's office and any retailer of ophthalmic materials or other commercial establishment;
 - (b) The permanent structural separation, such as a wall, shall not contain a door or any other opening that leads directly to a retailer of ophthalmic materials or other commercial establishment;
 - (c) The licensed optometrist's office shall have an entrance for patients that opens directly onto a public street, lobby, corridor, or other public thoroughfare; and
 - (d) A retailer of ophthalmic materials or other commercial establishment shall not, either directly or indirectly, control or attempt to control the professional judgment or practice of the licensed optometrist.
- (2) A lease between a licensed optometrist and a retailer of ophthalmic materials or other commercial establishment shall not be deemed a violation of T.C.A. §§ 63-8-113(c)(6) and/or 63-8-125 solely on the basis that the rental payments are based, in whole or in part, on the revenue earned by the licensed optometrist from his/her practice.
- (3) Violation of this rule may subject a licensee to disciplinary action pursuant to Rule 1045-02-.10.

Authority: T.C.A. §§ 63-8-113 and 63-8-125

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David Talley	X				
Jeff Foster	X				
John Gentry	X				
Richard Orgain	X				
Dennis Mathews	X				
Kimberly Button				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Optometry on February 26, 2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/11/2013

Rulemaking Hearing(s) Conducted on: (add more dates). 02/26/2014

Date: 06/11/2014

Signature: *John Scott Gentry, O.D.*

Name of Officer: John Scott Gentry, O.D.

Title of Officer: Chairman, Tennessee Board of Optometry



My Commission Expires JUNE 21, 2016

Subscribed and sworn to before me on: 6/11/14

Notary Public Signature: *J Seidman*

My commission expires on: 6/21/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

REC Cooper
Robert E. Cooper, Jr.
Attorney General and Reporter
8-15-14
Date

Department of State Use Only

Filed with the Department of State on: _____

8/18/14

Effective on: _____

11/16/14



Tre Hargett
Secretary of State

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